

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB -7 AM 9:22 ✓

SANDRA A. HARRHAM, CLERK

BY: Jacqueline Marshman

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY EIGHT

MARCH 2, 2011

Camp Verde, Arizona

(Partial transcript.)

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No 1 CA-CR 11-0895
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
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Direct by Ms. Polk

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APPEARANCES OF COUNSEL

For the Plaintiff:

YAVAPAI COUNTY ATTORNEY'S OFFICE
BY: SHEILA SULLIVAN POLK, ATTORNEY
BY: BILL R. HUGHES, ATTORNEY
255 East Gurley
Prescott, Arizona 86301-3868

For the Defendant:

THOMAS K KELLY, PC
BY THOMAS K. KELLY, ATTORNEY
425 East Gurley
Prescott, Arizona 86301-0001

MUNGER TOLLES & OLSON, LLP
BY LUIS LI, ATTORNEY
BY: TRUC DO, ATTORNEY
355 South Grand Avenue
Thirty-fifth Floor
Los Angeles, California 90071-1560

MUNGER TOLLES & OLSON, LLP
BY: MIRIAM L. SEIFTER, ATTORNEY
560 Mission Street
San Francisco, California 94105-2907

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Proceedings had before the Honorable
WARREN R. DARROW, Judge, taken on Wednesday,
March 2, 2011, at Yavapai County Superior Court,
Division Pro Tem B, 2840 North Commonwealth Drive,
Camp Verde, Arizona, before Mina G. Hunt, Certified
Reporter within and for the State of Arizona.

(This transcript is the complete
proceedings of Trial Day Eight, March 2, 2011, with
the exception of a sealed proceeding at the start
of the day.)

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PROCEEDINGS

(Partial transcript -- proceedings
resuming after sealed proceedings.)
(Recess.)

THE COURT: We're on the record in the
State of Arizona versus James Arthur Ray, who is
present with his attorneys Mr. Li and Ms. Do. The
state is represented by Ms. Polk and Mr. Hughes.
And this is the time to discuss some pretrial
matters.

Counsel?

MS. POLK: Good morning, Your Honor. Thank
you. The state is renewing their request, the
motion to reconsider the admissibility of the
404(b) acts for the following reasons, Your Honor:

The state believes that Mr. Li in his
opening has clearly opened the door for this
information to come in. When Mr. Li was addressing
the jury for many, many minutes on end, he talked
to the jury -- suggested to the jury that the state
had ignored other possible causes of death, said
that the state had ignored the possibility of
poisoning from chemicals, from products that were
used to construct the sweat lodge such as the tarp.

He suggested that the state had ignored
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the possibility of soil from inside the sweat lodge
as a source of toxins that caused the death, that
the state had ignored wood that was used in the
fire to heat the rocks as a possible cause of
the -- or source of the cause of death.

And he told the jury that the state had
disregarded initial concerns by the emergency room
physician and the paramedics that there were other
explanations for the cause of death, such as toxins
and such as carbon monoxide poisoning.

Repeatedly Mr. Li said to this jury, ask
yourself these questions when you hear this case.
Repeatedly Mr. Li said to this jury, wouldn't you
want to know, if you were investigating this case,
whether it was toxins that caused the deaths,
whether it was carbon monoxide, whether it was
chemical poisoning?

Repeatedly Mr. Li said to this jury, what
would you want to know in determining what happened
in this case? Again, referring to -- these are, in
his words, possible explanations for the cause of
death.

Also during Mr. Li's opening, he showed
the jury a photograph of the construction of a
sweat lodge. That was not a photograph from 2009,

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Mr. Ray's sweat lodge. That was a photograph of
the construction of the sweat lodge in 2008. I
have no problem with showing that photograph to the
jury because the sweat lodge that was used in 2008
was used in 2009. But the photograph that Mr. Li
threw up on the screen was, in fact, a photograph
from 2008, the construction of the sweat lodge
then.

Mr. Li also threw up on the screen for
the jury to see two photographs that were from
a 2009 sweat lodge ceremony that occurred in June.
The photograph that showed the completed sweat
lodge, that showed sleeping bags around the
entrance, that photograph was of a ceremony that
occurred in June of 2009.

Again, the sweat lodge that was used by
Mr. Ray in October is that same sweat lodge, but
that photograph was of the June 2009 sweat lodge
used by somebody else.

And then, finally, he threw up a
photograph of a 2009 -- the interior of the sweat
lodge, again, from this ceremony that occurred in
June of 2009. And it showed the interior of a
sweat lodge. Again, that is the sweat lodge used
by Mr. Ray, but that photograph was taken in June

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of 2009 in connection with a sweat lodge ceremony
conducted by somebody unrelated to Mr. Ray at the
premises of Angel Valley.

What the defense knows -- what Mr. Li
knows is during the four months between October
of 2009 and February of 2010 when the Grand Jury
indicted Mr. Ray, the state embarked on a very,
very thorough investigation to determine what
happened there and what the cause of death was.
What emerged during that investigation was a body
of evidence that established a pattern. And that
pattern is that the only time the participants in
the sweat lodge ceremony conducted in Angel Valley
got sick was when Mr. Ray was conducting a sweat
lodge ceremony.

And that pattern also showed that the
only time participants got sick during Mr. Ray's
sweat lodge ceremony was when he was ratcheting up
the heat.

And what the Court heard during the
404(b) hearing last November is that early on in
2003 and 2004, Mr. Ray conducted the sweat lodge
ceremonies at Angel Valley in different structures
and complained that they were not hot enough. And
so the owners of Angel Valley to accommodate him

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09 05 03AM 1 built different size structures and worked at
 09 05 06AM 2 making the structures hotter and hotter.
 09 05 09AM 3 Finally, in 2005, as the evidence showed
 09 05 12AM 4 at the 404(b) hearing, there was a very hot sweat
 09 05 15AM 5 lodge ceremony conducted by Mr. Ray with people
 09 05 17AM 6 getting very sick. And that's where the evidence
 09 05 20AM 7 of Daniel Pfankuch, who got very sick, came out
 09 05 24AM 8 screaming, was taken to the hospital and received
 09 05 29AM 9 medical attention that was relevant.

09 05 32AM 10 And that was also relevant because
 09 05 34AM 11 testimony at that 404(b) hearing showed that
 09 05 37AM 12 Mr. Ray specifically asked Daniel Pfankuch when he
 09 05 40AM 13 got home from the hospital about what Mr. Ray was
 09 05 43AM 14 calling his altered experience and that Mr. Ray was
 09 05 46AM 15 equating having had a hotter sweat lodge in 2005
 09 05 50AM 16 with accomplishing this altered state or this
 09 05 55AM 17 altered mental status in Daniel Pfankuch.

09 06 01AM 18 But the medical testimony in this case
 09 06 01AM 19 will be contrary to what Mr. Ray put up on this
 09 06 05AM 20 easel, is that there are two factors that have to
 09 06 07AM 21 be present to demonstrate heat-related illness such
 09 06 10AM 22 as heat stroke. One is elevated temperature. The
 09 06 13AM 23 other is an altered mental state. So what --

09 06 17AM 24 THE COURT: I'm sorry, Ms. Polk. I just
 09 06 22AM 25 noticed -- go ahead.

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09 06 24AM 1 MS. POLK: Okay. Your Honor, what the
 09 06 32AM 2 evidence in this case revealed, as the
 09 06 34AM 3 investigators went out and interviewed participants
 09 06 40AM 4 in the prior sweat lodge ceremonies, was that it
 09 06 43AM 5 didn't matter what wood was used to burn. It
 09 06 47AM 6 didn't matter what materials were on the sweat
 09 06 49AM 7 lodge. It didn't matter what soil was underneath
 09 06 52AM 8 the participants. What mattered was, was it
 09 06 58AM 9 Mr. Ray who was conducting the ceremony and how
 09 07 00AM 10 much heat was inside that sweat lodge.
 09 07 04AM 11 The investigators discovered a pattern
 09 07 07AM 12 that from 2003 to 2009, there were many, many, many
 09 07 13AM 13 sweat lodge ceremonies conducted at Angel Valley.
 09 07 17AM 14 The only time people got sick was when it was
 09 07 20AM 15 Mr. Ray's sweat lodge ceremony.

09 07 23AM 16 So regardless of the fact that
 09 07 24AM 17 from 2009 -- 2008 through 2009, the same structure
 09 07 30AM 18 with the same tarps and the same sleeping bags that
 09 07 33AM 19 was used from 2008 forward by Mr. Ray on two
 09 07 36AM 20 occasions and by many, many other contractors --
 09 07 42AM 21 and what that body of evidence showed is that when
 09 07 48AM 22 that same sweat lodge structure was used in that
 09 07 53AM 23 same place, over that same soil, with the same
 09 07 58AM 24 tarps, and the same sleeping bags, with rocks from
 09 07 58AM 25 the site, the people did not get sick when it was

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09 08 01AM 1 someone other than Mr. Ray. When it was Mr. Ray
 09 08 03AM 2 conducting his ceremony in 2008 and 2009, people
 09 08 07AM 3 got sick.

09 08 15AM 4 And what the evidence showed and what the
 09 08 18AM 5 investigators found also is that pattern when
 09 08 22AM 6 Mr. Ray had a problem in 2005 because of the heat,
 09 08 27AM 7 he actually ratcheted down the heat. And so we
 09 08 30AM 8 know in 2006 there was not any problems.

09 08 32AM 9 He started ratcheting up the heat in
 09 08 35AM 10 2007. There began to be some problems. 2008 he
 09 08 38AM 11 made it even hotter. There were some serious
 09 08 40AM 12 problems. And in 2009 three people finally died.

09 08 48AM 13 And what Mr. Li argued to the jury
 09 08 51AM 14 yesterday was that what he was showing the jury in
 09 08 54AM 15 terms of the various hearsay statements that were
 09 08 56AM 16 put up about toxins and concerns, Mr. Li argued
 09 09 01AM 17 that what he was showing the jury was relevant
 09 09 03AM 18 because it went to the issue of why did the
 09 09 06AM 19 detectives ignore other possible explanations for
 09 09 10AM 20 cause of death.

09 09 11AM 21 The body of evidence is not that the
 09 09 13AM 22 detectives ignored other possible explanations for
 09 09 16AM 23 the cause of death. They were looking for causes.
 09 09 18AM 24 But this big body of evidence that goes back to
 09 09 22AM 25 2003 forward about when is it that people get sick

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09 09 25AM 1 in that sweat lodge over a four-month period was
 09 09 28AM 2 gathered. And then the conclusion was reached that
 09 09 32AM 3 it was the heat and it was Mr. Ray who was
 09 09 35AM 4 responsible.

09 09 35AM 5 Mr. Li has clearly opened the door,
 09 09 38AM 6 Your Honor, for the state to bring in this
 09 09 40AM 7 explanation of why the investigation went where it
 09 09 44AM 8 did and why ultimately it's Mr. Ray who was
 09 09 48AM 9 charged. He has clearly opened the door. He has
 09 09 51AM 10 rung that bell, Your Honor. And this testimony is
 09 09 54AM 11 clearly admissible.

09 09 55AM 12 It would be so misleading for Mr. Li to
 09 09 58AM 13 be allowed to have suggested to the jury that
 09 10 03AM 14 without any investigation, without looking at the
 09 10 06AM 15 body of evidence, somehow the state just decided to
 09 10 09AM 16 disregard toxins and chemicals and just
 09 10 13AM 17 unilaterally and arbitrarily decided that it was
 09 10 17AM 18 Mr. Ray that we were going to charge, because that
 09 10 19AM 19 is absolutely not true.

09 10 21AM 20 THE COURT: Mr. Li?

09 10 23AM 21 MR. LI: Your Honor, just a couple of points.
 09 10 28AM 22 First of all, time really works -- only goes in one
 09 10 32AM 23 direction. And when the crime scene was released
 09 10 37AM 24 by the state, it was literally less than 36 hours
 09 10 42AM 25 after the incident. So when the Hamiltons were

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09:10:47AM 1 permitted to destroy the scene, that took place
 09:10:51AM 2 less than 48 hours after the incident.
 09:10:53AM 3 And there was no investigation at that
 09:10:55AM 4 point into whether or not there had been any prior
 09:10:57AM 5 sweat lodges -- this is just as a matter of fact.
 09:11:02AM 6 There was no investigation into whether there had
 09:11:05AM 7 been prior sweat lodges, no investigation as to
 09:11:09AM 8 whether there had been any incidents at any prior
 09:11:12AM 9 sweat lodges at all.

09:11:13AM 10 So the idea that the State of Arizona
 09:11:15AM 11 carefully considered its various options and then
 09:11:18AM 12 settled on a particular course of investigation is
 09:11:20AM 13 just not born out by the facts.

09:11:23AM 14 What happened was on the night of the
 09:11:26AM 15 8th, medical responders were saying people had been
 09:11:30AM 16 poisoned. And that's part of the tape that
 09:11:33AM 17 Ms. Polk objected to where an EMT personnel said
 09:11:37AM 18 that he thought there might be some
 09:11:38AM 19 organophosphates, which are poisons.

09:11:42AM 20 And the state -- you know -- within less
 09:11:45AM 21 than two days of that let the Hamiltons destroy the
 09:11:49AM 22 entire scene. So it's just simply not true that
 09:11:52AM 23 the state had this carefully considered
 09:11:55AM 24 investigation.

09:11:56AM 25 But that's not even the point that we're
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09:11:58AM 1 making from this, Your Honor. The point isn't to
 09:12:01AM 2 tell -- to say -- to tell the jurors that the
 09:12:04AM 3 state -- you know -- is bad or something like that.
 09:12:08AM 4 The point is that there were other possible causes.

09:12:13AM 5 And now the crime scene is gone, and we
 09:12:17AM 6 have no idea what could have killed these folks.
 09:12:21AM 7 And that is directly relevant to the causation
 09:12:25AM 8 element of the charge. And the state must prove
 09:12:30AM 9 beyond a reasonable doubt that a superseding,
 09:12:32AM 10 intervening event did not cause the death.

09:12:35AM 11 It's not just the toxins that the medical
 09:12:39AM 12 responders were talking about. It's not just the
 09:12:41AM 13 wood or the rat poison in the shed, all of those
 09:12:45AM 14 things. And those are all things the state was
 09:12:48AM 15 aware of within a day of the incident -- or the
 09:12:50AM 16 accident.

09:12:51AM 17 It's did they look at the food? Did they
 09:12:53AM 18 look at the lodging? Did they look at -- you
 09:12:55AM 19 know -- what people were drinking? Did people go
 09:12:57AM 20 out and pick some weeds and make tea out of it?
 09:13:01AM 21 You know, they just -- they didn't look for all of
 09:13:03AM 22 these things.

09:13:05AM 23 And now a year and a half later, a year
 09:13:08AM 24 after Mr. Ray has been charged and arrested, taken
 09:13:09AM 25 into custody, all of those things, now the state

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09:13:13AM 1 wants to say, well -- you know -- actually what
 09:13:15AM 2 happened was we did investigate all of this, but
 09:13:18AM 3 they didn't. And that's the point. And the
 09:13:21AM 4 state's got to prove that some other cause didn't
 09:13:26AM 5 kill these folks.

09:13:28AM 6 And so it's not a question of whether
 09:13:30AM 7 this evidence is admissible for the purpose of --
 09:13:33AM 8 you know -- opening a door into some prior
 09:13:36AM 9 incidents. The evidence is specifically on the
 09:13:41AM 10 point of did Mr. Ray by encouragement kill three
 09:13:45AM 11 people, or is there some other possible
 09:13:48AM 12 explanation?

09:13:49AM 13 Now, just -- you know -- for the record,
 09:13:53AM 14 the state says that all these prior incidents were
 09:13:57AM 15 filled with catastrophes and what have you. I
 09:14:01AM 16 think the Court's ruling is exactly correct. After
 09:14:04AM 17 three days of hearing testimony that the state
 09:14:07AM 18 brought -- we didn't choose the witnesses. The
 09:14:08AM 19 state could have brought any number of witnesses
 09:14:11AM 20 they wanted to bring. They brought the witnesses
 09:14:14AM 21 that they had in November.

09:14:16AM 22 And we had three days of hearings. And
 09:14:18AM 23 that testimony demonstrated that, frankly,
 09:14:23AM 24 200 some-odd people went to these various sweat
 09:14:28AM 25 lodges. One person went to the hospital. That one

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09:14:29AM 1 person, as the Court found, clearly did not have a
 09:14:33AM 2 life-threatening injury and that that would have
 09:14:37AM 3 put nobody on notice that there was a serious risk
 09:14:41AM 4 of death. And that's why the Court found that none
 09:14:44AM 5 of this evidence was admissible.

09:14:45AM 6 The problem that I see, Your Honor, is
 09:14:48AM 7 that what the state relies on for its -- for its
 09:14:55AM 8 conclusion that there were -- you know -- people
 09:14:57AM 9 who were dying, basically, in 2005, 2008, is just
 09:15:03AM 10 lay witnesses.

09:15:03AM 11 Somebody -- and I'll give you one
 09:15:06AM 12 example. There was a witness who testified about
 09:15:08AM 13 2005 and Daniel P. He said -- I think he's even
 09:15:13AM 14 said this in the media. Okay. He's one of these
 09:15:15AM 15 guys who has to tell his story out there in the
 09:15:18AM 16 media.

09:15:19AM 17 He says, I saved his life because his
 09:15:22AM 18 brain was boiling. I knew his brain was boiling.
 09:15:25AM 19 And had I not cooled off his brain, he would
 09:15:27AM 20 have -- his brain would have exploded, words to
 09:15:30AM 21 that effect.

09:15:31AM 22 I would submit to you, Your Honor, that's
 09:15:32AM 23 just not true on its face. No -- it's just -- it's
 09:15:35AM 24 not credible that somebody's brain is boiling and
 09:15:38AM 25 that some guy can just come in here and tell the

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09:15:42AM 1 jury that I saved this guy's life because I knew --
 09:15:46AM 2 you know -- based on no medical training, nothing
 09:15:48AM 3 at all, that this guy's brain was boiling. And
 09:15:50AM 4 I've told ABC News that too.
 09:15:52AM 5 Those are the kinds of testimony that
 09:15:57AM 6 need to be excluded from the courtroom, a bunch of
 09:16:00AM 7 lay witnesses after the fact who frankly know none
 09:16:07AM 8 of the facts of any of these cases -- of this case
 09:16:09AM 9 and -- you know -- now want to use this as an
 09:16:11AM 10 opportunity to talk about whatever they want to
 09:16:14AM 11 talk about and have their 15 minutes of fame.
 09:16:17AM 12 And I think it's disingenuous for the
 09:16:21AM 13 state to say that all of these prior incidents
 09:16:25AM 14 demonstrated that something horrible was happening.
 09:16:27AM 15 What we were trying to avoid is a minitrial just
 09:16:30AM 16 like the Court saw in November where you've got
 09:16:34AM 17 witnesses saying, oh, this person was in medical
 09:16:37AM 18 distress.
 09:16:37AM 19 I think the Court will recall we had all
 09:16:39AM 20 these pictures out there and the witnesses saying
 09:16:42AM 21 20 people were in medical distress. And then we
 09:16:44AM 22 walked them through the photograph, and they
 09:16:45AM 23 identified, this person was in medical distress.
 09:16:47AM 24 This person was unconscious. And then we showed
 09:16:50AM 25 the next picture where the same person is sitting

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09:16:52AM 1 there -- you know -- sitting up out on the mud with
 09:16:54AM 2 a thumbs up. And we're trying to avoid that.
 09:16:56AM 3 What's relevant for this case is what happened
 09:16:58AM 4 in 2009.
 09:17:02AM 5 Now, we don't know what was in the soil.
 09:17:05AM 6 We don't know what was in the tarps. We don't know
 09:17:08AM 7 if somebody applied something -- some insecticide,
 09:17:12AM 8 some rat poison, or something else -- after a
 09:17:15AM 9 particular sweat lodge ceremony. We don't know.
 09:17:18AM 10 And what happened was the state let the crime scene
 09:17:22AM 11 get destroyed, so we'll never know. And that's not
 09:17:25AM 12 the defendant's fault. That's not Mr. Ray's fault.
 09:17:30AM 13 A couple of points I want to make about
 09:17:32AM 14 what Ms. Polk said about some of the photographs
 09:17:34AM 15 that we showed up there. I tell you, one of the
 09:17:36AM 16 photographs is the inside of the lodge where it's
 09:17:39AM 17 sort of being -- it's the skeleton of the lodge.
 09:17:43AM 18 That is actually not a scene of the lodge being
 09:17:47AM 19 constructed. It's actually a scene of the lodge
 09:17:50AM 20 being destructed, destroyed -- I guess that's not a
 09:17:55AM 21 word. Destroyed by Mr. Hamilton. And then there
 09:17:58AM 22 is a whole series of photographs afterwards.

09:18:00AM 23 With respect to the other photographs,
 09:18:03AM 24 all I can tell you, Your Honor, is I've looked at
 09:18:05AM 25 the metadata, which is the data when pictures are

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09:18:08AM 1 taken. And they seem like they were taken in
 09:18:11AM 2 October 2009.
 09:18:12AM 3 Now, I'm not an expert on that. And the
 09:18:14AM 4 state has never told us that these are from some
 09:18:17AM 5 other period of time. So if they are from some
 09:18:19AM 6 other period of time, they've never identified it
 09:18:23AM 7 as such. And the metadata sure looks consistent
 09:18:27AM 8 with October 2009. And you can see it.
 09:18:30AM 9 You know, the camera tells you when it
 09:18:34AM 10 took the picture. I mean, I can tell you it's a
 09:18:38AM 11 Sony and a Canon. And it tells you what exposure.
 09:18:42AM 12 But if it is from another time period, we were
 09:18:46AM 13 never informed that by the state.
 09:18:48AM 14 And we looked at this and we believed
 09:18:50AM 15 that the only reason why the state would produce
 09:18:52AM 16 these to us is because they were relevant to this
 09:18:55AM 17 case. So, Your Honor -- you know -- those are just
 09:18:58AM 18 some factual points.
 09:18:59AM 19 On the legal point, I think here's the
 09:19:01AM 20 problem with the state's argument: There is no law
 09:19:04AM 21 attached to it. It's just a generalized complaint.
 09:19:08AM 22 There is not a single piece of law that identifies
 09:19:11AM 23 how they're going to deal with the issue that they
 09:19:13AM 24 charged reckless, reckless manslaughter, and none
 09:19:16AM 25 of this evidence is relevant to reckless

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09:19:21AM 1 manslaughter, as the Court has previously ruled.
 09:19:23AM 2 I'm not going to waste the Court's time.
 09:19:25AM 3 So if the Court doesn't need more argument from me,
 09:19:28AM 4 I will sit down.
 09:19:29AM 5 THE COURT: I want you to tell me what you
 09:19:31AM 6 think I need to hear, Mr. Li.
 09:19:33AM 7 MR. LI: Okay. Your Honor, I'm just reading
 09:19:34AM 8 some body language. I don't want to overstay my
 09:19:37AM 9 welcome.
 09:19:41AM 10 The bottom line is this: As the Court
 09:19:44AM 11 identified yesterday -- I believe, yesterday,
 09:19:48AM 12 the -- you know -- the state made its own charging
 09:19:51AM 13 decision. It could have charged this case any way
 09:19:54AM 14 it wanted to. It charged reckless homicide. This
 09:19:57AM 15 evidence is not admissible for reckless homicide.
 09:20:02AM 16 It's did know, not should have known.
 09:20:05AM 17 And the state had all the options. It
 09:20:08AM 18 could have done anything it wanted. This is their
 09:20:10AM 19 issue. And so now they've got a situation where
 09:20:14AM 20 they've charged a case where they can't bring in
 09:20:17AM 21 this evidence because it's properly -- because it's
 09:20:18AM 22 not admissible.

09:20:19AM 23 And I don't know if they want to put on a
 09:20:23AM 24 minitrial with people getting up there and just
 09:20:26AM 25 saying whatever their opinion is about this person

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09:20:28AM 1 was suffering from heat stroke, even though none of
 09:20:32AM 2 them went to the hospital and there is no medical
 09:20:34AM 3 evidence at all of that.

09:20:36AM 4 There is very specific diagnostic
 09:20:38AM 5 criteria. Every doctor who comes in here is going
 09:20:41AM 6 to tell you that. There is specific diagnostic
 09:20:45AM 7 criteria.

09:20:48AM 8 And you know what, Your Honor. Altered
 09:20:47AM 9 mental state is not -- there is a lot of things
 09:20:49AM 10 that cause that. Elevated temperature and
 09:20:52AM 11 dehydration -- those are central to heat stroke.
 09:20:55AM 12 And so for the state's -- you know -- idea that it
 09:20:58AM 13 can just simply bring in a bunch of folks who have
 09:21:03AM 14 no training at all who are just going to opine that
 09:21:05AM 15 based on their observation a man's brain was
 09:21:08AM 16 boiling, something like that, that's just not
 09:21:11AM 17 things that should be before the jury.

09:21:25AM 18 I don't have anything else, Your Honor.

09:21:28AM 19 THE COURT: Thank you, Mr. Li.

09:21:27AM 20 MR. LI: Thank you.

09:21:28AM 21 THE COURT: Ms. Polk?

09:21:28AM 22 MS. POLK: Thank you, Judge. First, I want to
 09:21:31AM 23 address the issue of the photographs. The
 09:21:32AM 24 photographs were disclosed with full information
 09:21:36AM 25 what they pertained to. The state does believe

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09:21:38AM 1 that photographs from 2008 and photographs
 09:21:42AM 2 from 2009 are relevant. But when they were
 09:21:45AM 3 disclosed to the defense, it was made clear that
 09:21:47AM 4 some of these photographs were from a 2008
 09:21:50AM 5 construction and that some pertained to 2009.

09:21:56AM 6 Your Honor, everything that Mr. Li,
 09:21:58AM 7 frankly, just said ignored the issue I'm raising
 09:22:00AM 8 with the Court, which is that in Mr. Li's opening
 09:22:05AM 9 statement yesterday, he argued that the hearsay he
 09:22:08AM 10 was showing the jury about suspicions of toxins and
 09:22:12AM 11 other chemicals was relevant because it went to the
 09:22:14AM 12 issue of the detectives and his words, ignoring
 09:22:18AM 13 other possible causes of death.

09:22:20AM 14 Over and over again he said to the jury,
 09:22:23AM 15 wouldn't you want to know about the toxins and the
 09:22:26AM 16 tarps and the rat poison? And over and over he
 09:22:28AM 17 said to the jury, as this case progresses, ask
 09:22:33AM 18 yourself what you would like to know.

09:22:34AM 19 Detective Diskin will testify in this
 09:22:37AM 20 case. And he will answer that question this way:
 09:22:41AM 21 Which is he wanted to know as well. And over the
 09:22:45AM 22 next four months, they investigated, followed every
 09:22:53AM 23 lead. And ultimately in -- four months later, the
 09:23:01AM 24 defendant was indicted. And what Detective Diskin
 09:23:01AM 25 will testify to is over that four-month period,

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09:23:04AM 1 this pattern emerges.

09:23:08AM 2 Your Honor, I wanted to address the
 09:23:08AM 3 suggestion that the crime scene was destroyed.

09:23:10AM 4 Nothing was destroyed at the crime scene. The
 09:23:13AM 5 detectives came in. They thoroughly processed the
 09:23:16AM 6 crime scene. They took many, many, many samples of
 09:23:20AM 7 everything, as the defense well knows.

09:23:23AM 8 The detectives took samples of the wood
 09:23:26AM 9 used to heat the rocks. They took samples of the
 09:23:28AM 10 wood used to build the sweat lodge structure. They
 09:23:32AM 11 took samples -- multiple samples of the tarps.
 09:23:38AM 12 They took multiple samples of the sleeping bags and
 09:23:41AM 13 other coverings. They took multiple samples of
 09:23:43AM 14 every fluid that was at the scene.

09:23:45AM 15 They seized the fruit. They seized water
 09:23:48AM 16 bottles, every water bottle that was at the scene.
 09:23:52AM 17 They completely and thoroughly processed the crime
 09:23:55AM 18 scene. And when the detectives were finished with
 09:23:57AM 19 the crime scene, they released it, as happens at
 09:23:58AM 20 every crime scene.

09:24:01AM 21 And then once the crime scene is
 09:24:02AM 22 released, what the owner of the property involved
 09:24:04AM 23 in the crime does with the crime scene is their
 09:24:07AM 24 business. And what the Hamiltons chose to do was
 09:24:10AM 25 to handle a site, where three people were killed,

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09:24:13AM 1 with respect by burning the materials left, holding
 09:24:18AM 2 a memorial service on site and using the rocks that
 09:24:21AM 3 remained to form a heart.

09:24:24AM 4 The detectives, by the way, seized the
 09:24:28AM 5 rocks. They thoroughly sampled everything at the
 09:24:31AM 6 scene. The crime scene was not destroyed. All of
 09:24:34AM 7 those samples have been in evidence ever since.

09:24:37AM 8 The defense would have been able to test
 09:24:38AM 9 some of that if they chose to. They did not choose
 09:24:42AM 10 to test any of the items that were seized.

09:24:45AM 11 And the state -- the investigators,
 09:24:46AM 12 having seized samples, then made a determination
 09:24:48AM 13 over the next few months, should they have these
 09:24:53AM 14 products tested? As the jury was shown by, again,
 09:24:58AM 15 documents being thrown up on the screen, apparently
 09:25:01AM 16 the correspondence log between the criminalist and
 09:25:05AM 17 the detective about discussions early on. We have
 09:25:08AM 18 these samples. Should we test them?

09:25:12AM 19 Well, a decision is made by detectives
 09:25:14AM 20 not to sample because it wasn't necessary. And it
 09:25:17AM 21 wasn't necessary because of this pattern, the body
 09:25:20AM 22 of evidence that had emerged that the only time
 09:25:23AM 23 there is problems and the only time people got sick
 09:25:27AM 24 is when Mr. Ray conducted the sweat lodge ceremony.
 09:25:32AM 25 And the only time people got sick in Mr. Ray's

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09 25 35AM 1 sweat lodges was when he was ratcheting up the
 09 25 37AM 2 heat. And so the body of evidence, then, pointed
 09 25 39AM 3 toward what the ME independently had concluded,
 09 25 41AM 4 which was the victims died of heat stroke or
 09 25 43AM 5 exposure to prolonged heat.

09 25 50AM 6 Additionally, Your Honor, the very next
 09 25 52AM 7 day detectives interviewed the Mercers. And the
 09 25 55AM 8 Mercers testified at the 404(b) hearing. People
 09 25 58AM 9 died on October 8. Our victims passed away on
 09 26 01AM 10 October 8. By October 9 the detectives were
 09 26 04AM 11 interviewing the Mercers, separated them, and
 09 26 07AM 12 inquired as to each of the Mercers what had
 09 26 10AM 13 happened.

09 26 10AM 14 What they had learned before they even
 09 26 12AM 15 released the crime scene was what I have just said.
 09 26 15AM 16 Each of the Mercers independently told the
 09 26 18AM 17 detectives that the only time people got sick was
 09 26 21AM 18 when it was Mr. Ray conducting the sweat lodge
 09 26 24AM 19 ceremony. Each of the Mercers independently told
 09 26 30AM 20 the detectives how extreme Mr. Ray's sweat lodge
 09 26 33AM 21 ceremonies were and how 2009 was more extreme than
 09 26 37AM 22 2008, which was more extreme than 2007.

09 26 39AM 23 And each of the Mercers independently,
 09 26 41AM 24 separately told the detectives that during the
 09 26 45AM 25 period of time that they had been assisting

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09 26 49AM 1 facilitating sweat lodge ceremonies from 2007
 09 26 52AM 2 through 2009, there had been multiple sweat lodge
 09 26 54AM 3 ceremonies on the property.

09 26 55AM 4 The only time there were any problems,
 09 26 57AM 5 the only time people got sick, was when it was
 09 27 00AM 6 Mr. Ray who was conducting the ceremonies. That
 09 27 03AM 7 information was available. That's what the
 09 27 05AM 8 detectives knew after they sampled and before they
 09 27 08AM 9 released the crime scene.

09 27 14AM 10 Mr. Li, true to his opening statement
 09 27 17AM 11 through this argument to the jury, has clearly made
 09 27 20AM 12 all of this information relevant. This trial is a
 09 27 24AM 13 search for the truth, Your Honor. To continue to
 09 27 27AM 14 exclude information about prior sweat lodge
 09 27 30AM 15 ceremonies and this complete body of evidence that
 09 27 33AM 16 was learned during the investigation clearly
 09 27 38AM 17 misleads the jury.

09 27 40AM 18 And to continue to preclude the state
 09 27 43AM 19 from -- and now to preclude the state from
 09 27 46AM 20 answering the very question that Mr. Li posed to
 09 27 49AM 21 the jury, which is wouldn't you want to know and
 09 27 55AM 22 why didn't you test -- we have that answer. We
 09 27 58AM 23 have a body of evidence that was discovered over
 09 28 00AM 24 four months that answers that very question that
 09 28 00AM 25 Mr. Li repeatedly posed to the jury.

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09 28 05AM 1 This is not -- the state is not talking
 09 28 06AM 2 about doing a minitrial. And, frankly, to somehow
 09 28 10AM 3 suggest to the Court that we can't handle the
 09 28 14AM 4 evidence as an explanation or as an excuse to keep
 09 28 17AM 5 relevant evidence out is disingenuous.

09 28 24AM 6 We have many witnesses who will testify
 09 28 26AM 7 starting today who have information about that
 09 28 29AM 8 pattern that I talked about. That information
 09 28 31AM 9 would be elicited from these witnesses. And there
 09 28 34AM 10 will be a few additional witnesses who were only
 09 28 38AM 11 present on prior occasions.

09 28 39AM 12 But the Hamiltons will already be
 09 28 42AM 13 testifying. The Mercers will already be
 09 28 44AM 14 testifying. Many of the participants in 2009 know
 09 28 48AM 15 some information, and we have the Dream Team
 09 28 52AM 16 members who will already be testifying. We have
 09 28 54AM 17 former employees of James Ray International who
 09 28 58AM 18 will be testifying.

09 28 59AM 19 This is not going to be a minitrial
 09 29 01AM 20 within a trial. This is going to be a search for
 09 29 05AM 21 the truth. And extremely relevant, imperative to
 09 29 11AM 22 the state's ability to get the truth out so that
 09 29 14AM 23 the jury understands what happened is our ability
 09 29 17AM 24 to talk about that pattern of evidence that
 09 28 21AM 25 emerged.

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09 29 22AM 1 It's only when the defendant is
 09 29 23AM 2 conducting sweat lodge ceremonies at Angel Valley
 09 29 25AM 3 that people get sick. And it's only when the
 09 29 29AM 4 defendant specifically makes that sweat lodge
 09 29 31AM 5 hotter and hotter that people get sick to the
 09 29 34AM 6 extreme, and ultimately three people die.

09 29 37AM 7 THE COURT: Okay. This is a very important
 09 29 40AM 8 issue in this case.

09 29 41AM 9 Mr. Li, you are obviously anxious to say
 09 29 45AM 10 something.

09 29 45AM 11 MR. LI: Yes, Your Honor.

09 29 48AM 12 THE COURT: And it's a fundamental issue --

09 29 48AM 13 MR. LI: Thank you, Your Honor.

09 29 48AM 14 THE COURT: -- in this case in some respects.
 09 29 50AM 15 So I want to hear what you have to say.

09 29 53AM 16 MR. LI: Thank you, Your Honor. I mean no
 09 29 54AM 17 disrespect to Detective Diskin. And we are not
 09 30 00AM 18 casting aspersions onto Detective Diskin. What we
 09 30 00AM 19 are saying is that something else could have killed
 09 30 03AM 20 these folks. And we have a right to produce that
 09 30 05AM 21 evidence.

09 30 05AM 22 Now, the state is saying that, well, all
 09 30 08AM 23 this other evidence is admissible because it shows,
 09 30 11AM 24 proves that nothing else killed these -- well,
 09 30 15AM 25 actually it proves that the investigation was

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09:30:16AM 1 sound. That's not an issue in the case, whether
09:30:20AM 2 the investigation was sound.

09:30:21AM 3 The real issue in the case is whether
09:30:25AM 4 something else killed these folks. That is an
09:30:29AM 5 element of the defense. We have every right to
09:30:31AM 6 defend on that ground.

09:30:31AM 7 I think one of the issues that Ms. Polk
09:30:34AM 8 suggests that is simply factually incorrect is this
09:30:38AM 9 idea that they were guided by the medical examiners
09:30:42AM 10 and that the medical examiners -- this is just a
09:30:45AM 11 factual thing I want to point out. That the
09:30:47AM 12 medical examiners were sort of saying, well, it's
09:30:48AM 13 heat stroke. It's heat stroke, so you can
09:30:52AM 14 disregard everything else.

09:30:53AM 15 Point of record. The medical examiners
09:30:55AM 16 released their reports on February 2nd, 2010, the
09:31:00AM 17 day before Mr. Ray was indicted, months after the
09:31:08AM 18 crime scenes had been destroyed. And we've
09:31:11AM 19 interviewed Detective Diskin a couple of times.
09:31:14AM 20 Ms. Do has. And there is a whole series of
09:31:16AM 21 questions relating to the conversations that the
09:31:18AM 22 detective and the medical examiners had.

09:31:24AM 23 Did the MEs discuss sandalwood?

09:31:28AM 24 Diskin: I don't remember that. No.

09:31:28AM 25 Did anyone bring up their discussion of
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09:31:30AM 1 the wood?

09:31:31AM 2 Diskin: I don't recall.

09:31:31AM 3 What about the samples you took? What
09:31:33AM 4 was brought up in the discussions with the ME --
09:31:35AM 5 the soil samples, the tarp, the representative
09:31:42AM 6 samples from the -- what about the samples you
09:31:44AM 7 took? Was that brought up in the discussions with
09:31:46AM 8 the MEs -- the soil sample, the tarp, the
09:31:50AM 9 representative samples from (inaudible) and the
09:31:55AM 10 fire wood?

09:31:56AM 11 Diskin: I don't remember if that was
09:31:58AM 12 brought up.

09:31:59AM 13 Did they ask about it?

09:32:01AM 14 I don't remember.

09:32:04AM 15 They didn't talk about it, or at least
09:32:06AM 16 Detective Diskin, who is the case agent, doesn't
09:32:08AM 17 recall ever talking about it.

09:32:11AM 18 And I want to point out, Your Honor, this
09:32:13AM 19 is the meeting that Your Honor will recall we
09:32:16AM 20 interviewed -- we attempted -- we, the defense,
09:32:19AM 21 attempted to interview the medical examiners about
09:32:24AM 22 a meeting that the medical examiners had with the
09:32:26AM 23 state, including Ms. Polk, including Mr. Hughes,
09:32:30AM 24 including Detective Diskin, and other
09:32:32AM 25 representatives of the state.

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09:32:34AM 1 And Mr. Hughes objected and said you
09:32:37AM 2 can't get into that. And he asserted a legal
09:32:40AM 3 objection that has no basis in law ever, so much so
09:32:48AM 4 that this Court ordered the disclosure from that
09:32:53AM 5 meeting of all of the information from that meeting
09:32:55AM 6 and ordered sanctions against the state for taking
09:33:00AM 7 a position that was not proper.

09:33:03AM 8 This is the same meeting in which the
09:33:06AM 9 medical examiner himself said to Mr. Hughes,
09:33:09AM 10 listen, Bill. I'm the chief medical examiner of
09:33:13AM 11 Maricopa County. I've been doing this 17 years.
09:33:16AM 12 And I've never been told by a prosecutor not to
09:33:18AM 13 answer any questions. I'm the umpire. I just call
09:33:23AM 14 them how I see them.

09:33:25AM 15 So this idea that this is a search for
09:33:28AM 16 the truth and that somehow the defense is
09:33:33AM 17 obfuscating the truth, I take umbrage with that,
09:33:36AM 18 Your Honor. I take deep umbrage with that.

09:33:38AM 19 I think the problem with Ms. Polk's
09:33:40AM 20 statements here are that they're unbounded by any
09:33:43AM 21 law, and, frankly, they don't comport very well
09:33:46AM 22 with the actual facts of what actually took place.

09:33:50AM 23 We've been trying to figure this out for
09:33:52AM 24 a long time. And we've been having to fight the
09:33:56AM 25 state to get any answers.

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09:33:58AM 1 We get disclosures of medical records,
09:34:00AM 2 Your Honor. And I'm sorry to bring this up. But
09:34:02AM 3 one of the medical records that we showed -- these
09:34:04AM 4 are the state's own exhibits that we showed up on
09:34:06AM 5 the screen. We didn't make them. One of the
09:34:08AM 6 state's exhibits, which is the medical records for
09:34:11AM 7 this gentleman, Stephen Ray, who was in a coma --
09:34:15AM 8 that's a medical record that says this patient was
09:34:20AM 9 not -- did not appear to have heat stroke, twice.
09:34:24AM 10 T.

09:34:25AM 11 Hat was not disclosed to us until
09:34:27AM 12 January -- maybe January 25th, something like that,
09:34:32AM 13 after our expert said, listen. Can we get all of
09:34:35AM 14 the medical records?

09:34:36AM 15 So the point is, Your Honor, that this
09:34:41AM 16 complaint the state's making about, oh, we're
09:34:43AM 17 trying to obfuscate the truth is simply not the
09:34:46AM 18 case. The state has not been able to articulate
09:34:49AM 19 any reason why -- legal reason why the Court should
09:34:54AM 20 reverse it's well-founded ruling that it made.

09:34:58AM 21 And we briefed this issue quite a bit.
09:35:00AM 22 And the fact that we're defending and saying that
09:35:03AM 23 there might be another cause of death -- the fact
09:35:06AM 24 that we're defending Mr. Ray and saying that there
09:35:10AM 25 might be another cause of death does not open the

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09:35:12AM 1 door to having somebody get up there and testify
 09:35:16AM 2 about his opinion that somebody's brain was boiling
 09:35:20AM 3 when, in fact, 200 -- I mean, Your Honor, I
 09:35:24AM 4 mentioned this yesterday morning. I'm sorry. I'll
 09:35:28AM 5 stop after this. But I mentioned this yesterday
 09:35:32AM 6 morning.

09:35:36AM 7 The reality of it is -- you know -- there
 09:35:40AM 8 were quite a number of sweat lodges that took place
 09:35:44AM 9 with Mr. Ray. 200 -- I think the Court said 200
 09:35:48AM 10 some-odd participants --

09:35:52AM 11 THE COURT: I don't know. That was my rough
 09:35:56AM 12 estimate.

09:35:59AM 13 MR. LI: -- give or take. Went through the
 09:36:03AM 14 sweat lodge ceremonies. One person went to the
 09:36:07AM 15 hospital. That person's treatment was
 09:36:11AM 16 essentially -- and this is in the actual only
 09:36:15AM 17 medical records in this whole dispute. That
 09:36:19AM 18 person's medical treatment -- Mr. Daniel P. -- was
 09:36:23AM 19 to get a shower and get brushed off and told to go
 09:36:27AM 20 home -- go back.

09:36:31AM 21 And he came back to the seminar the next
 09:36:35AM 22 day. And the Court rightly found that that was
 09:36:39AM 23 clearly not life threatening. And there is no
 09:36:43AM 24 other medical evidence out there.

09:36:47AM 25 What you have instead is people saying,
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09:36:15AM 1 oh, yeah. That person looks like they're in
 09:36:19AM 2 medical distress. The Court was here. That person
 09:36:23AM 3 looks like they're in medical distress, and then
 09:36:27AM 4 you show pictures of the same person doing this.
 09:36:31AM 5 That's not admissible, Your Honor. And the Court's
 09:36:35AM 6 ruling was well-founded.

09:36:39AM 7 THE COURT: Thank you, Mr. Li.

09:36:43AM 8 Ms. Polk, I want to make a ruling that if
 09:36:47AM 9 you think Mr. Li has brought something up that you
 09:36:51AM 10 need to address. Let's do it that way.

09:36:55AM 11 I don't see this as a 404(b) issue. And
 09:36:59AM 12 I mentioned that yesterday at the pretrial. I
 09:37:03AM 13 handled the 404(b) motion on the terms it was given
 09:37:07AM 14 me, and I'm not reconsidering that ruling. That
 09:37:11AM 15 stays.

09:37:15AM 16 However, there is an issue of causation.
 09:37:19AM 17 And because there is an issue of causation,
 09:37:23AM 18 observations that are based on adequate foundation
 09:37:27AM 19 evidence would be admissible, not the general
 09:37:31AM 20 statements that happened at the 404(b) or were
 09:37:35AM 21 given at the 404(b) hearing where people wanted to
 09:37:39AM 22 look at a photo and then say this might have been
 09:37:43AM 23 the condition of somebody.

09:37:47AM 24 I'm talking about if there is somebody
 09:37:51AM 25 that actually experienced something and has a basis
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09:37:34AM 1 to testify as to what was experienced, that would
 09:37:38AM 2 be admissible on this causation issue. A direct
 09:37:42AM 3 observation of a person. That would be admissible.
 09:37:46AM 4 Something that a layperson could testify about in
 09:38:01AM 5 accordance with Rule 701.

09:38:05AM 6 What has to be avoided are general
 09:38:09AM 7 statements that tries to characterize the whole
 09:38:13AM 8 event or the postevent. That has to be avoided.

09:38:17AM 9 If you look at 404(b), it's concerned
 09:38:21AM 10 with character evidence. And it talks about
 09:38:25AM 11 exceptions if the evidence is offered for a
 09:38:29AM 12 different purpose. And you look at the purpose
 09:38:33AM 13 that are listed -- the purposes that are listed,
 09:38:37AM 14 and they're not exclusive.

09:38:41AM 15 But it's motive, opportunity, intent,
 09:38:45AM 16 preparation, plan, knowledge, identity, or absence
 09:38:49AM 17 of mistake or accident. So the rule is concerned
 09:38:53AM 18 with having general character evidence come in
 09:38:57AM 19 instead of evidence that really talks about some
 09:39:01AM 20 type of specific characteristic of a person's
 09:39:05AM 21 conduct.

09:39:09AM 22 This testimony that the state's
 09:39:13AM 23 proposing, as I see it, has nothing to do with
 09:39:17AM 24 that. It has to do with what kind of physical or
 09:39:21AM 25 mental effects occurred at prior sweat lodge
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09:39:11AM 1 events, and that's it. It doesn't have anything to
 09:39:15AM 2 do with something that bears on somebody's intent,
 09:39:19AM 3 or it cannot anyway.

09:39:23AM 4 And if it takes a limiting instruction
 09:39:27AM 5 under 105, then it does. But I think if it's
 09:39:31AM 6 carefully confined to the actual observations --
 09:39:35AM 7 again, the foundation is there.

09:39:39AM 8 I don't think it's going to be an issue.
 09:39:43AM 9 And that was discussed yesterday, Mr. Li, at the
 09:39:47AM 10 pretrial conference. And my statement that so much
 09:39:51AM 11 of this, essentially, is uncontested information,
 09:39:55AM 12 in any event.

09:39:59AM 13 So I'm denying the motion to reconsider
 09:40:03AM 14 on the terms I got that motion. It stands.

09:40:07AM 15 However, this evidence that the state is
 09:40:11AM 16 proposing now didn't result from any opening of the
 09:40:15AM 17 door. That's not why it's relevant. That did not
 09:40:19AM 18 happen. It's just now part of the case and the
 09:40:23AM 19 issues that are involved.

09:40:27AM 20 MR. LI: Your Honor, just so that we can
 09:40:31AM 21 manage this -- I mean, obviously we may ask for an
 09:40:35AM 22 opportunity to brief some of this. But just so
 09:40:39AM 23 that we can manage this, in the next -- you know --
 09:40:43AM 24 few weeks, I would ask that the state proffer what
 09:40:47AM 25 these witnesses are going to say about that

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09:40:32AM 1 particular issue before they say it.
 09:40:34AM 2 The problem is this: You have some very
 09:40:36AM 3 emotional folks who -- some of whom have a stake in
 09:40:38AM 4 this matter -- Your Honor, some of them have a very
 09:40:40AM 5 serious stake in this matter, who have very
 09:40:42AM 6 flamboyant ways of describing things. And that is
 09:40:44AM 7 precisely -- and we've listened to these tapes and
 09:40:46AM 8 spent many hours listening, as I'm sure the Court
 09:40:48AM 9 has as well. And --

09:41:00AM 10 THE COURT: I know I've read a lot of
 09:41:02AM 11 transcripts and interviews. I have not listened to
 09:41:04AM 12 tapes.

09:41:07AM 13 MR. LI: Okay. Well, for the record, some of
 09:41:09AM 14 these folks have some fairly flamboyant ways of
 09:41:11AM 15 describing what they see. And what I would want
 09:41:13AM 16 from the state is some proffer as to what these
 09:41:15AM 17 folks are actually going to say instead of just
 09:41:17AM 18 throwing them up there and waiting for us to object
 09:41:19AM 19 to something.

09:41:21AM 20 This is very -- you know -- touchy stuff
 09:41:23AM 21 here. And it is -- you know -- 99.9 percent of
 09:41:25AM 22 what these folks actually want to say lacks
 09:41:27AM 23 foundation. You know, if the Court is saying, I
 09:41:29AM 24 saw somebody lying on the ground wet, that's one
 09:41:31AM 25 thing.

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09:41:47AM 1 You know, if the Court -- if the witness
 09:41:49AM 2 says, I saw somebody who threw up, that's -- that
 09:41:51AM 3 is an observation. We happen to think it's
 09:41:53AM 4 irrelevant, but that is an observation. I mean, I
 09:41:55AM 5 don't think it's putting anybody on notice of
 09:41:57AM 6 anything, as the Court ruled in its prior
 09:42:01AM 7 proceeding.

09:42:03AM 8 You know, the way the state conducted
 09:42:05AM 9 questioning in our 404(b) hearing, the state would
 09:42:07AM 10 simply ask questions like this: Did you see
 09:42:09AM 11 anybody in medical distress? And then we had all
 09:42:11AM 12 these objections about this back and forth. And
 09:42:13AM 13 then -- you know -- these witnesses will say, yes.
 09:42:15AM 14 Of course I saw somebody in medical distress,
 09:42:17AM 15 notwithstanding the fact that they don't have --
 09:42:19AM 16 that term is entirely undefined and, frankly, has
 09:42:21AM 17 potentially prejudicial impact because it is
 09:42:23AM 18 undefined.

09:42:25AM 19 If you had a medical doctor getting up
 09:42:27AM 20 there and saying, yeah. I saw somebody who
 09:42:29AM 21 appeared to me to have nausea and appeared to me --
 09:42:31AM 22 you know -- to have -- you know -- symptoms
 09:42:33AM 23 consistent with "X," that would be admissible. But
 09:42:35AM 24 when you just have somebody talking about
 09:42:37AM 25 somebody's brain boiling and whatever, those sorts

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09:42:52AM 1 of things, that's not admissible.

09:42:54AM 2 And we would ask that the state simply --
 09:42:56AM 3 if this is the course we're going to go down, we'd
 09:42:58AM 4 want to know what these folks are going to say
 09:43:00AM 5 before they say it.

09:43:02AM 6 THE COURT: Ms. Polk, you wanted to reply?

09:43:04AM 7 And did you understand my ruling?

09:43:06AM 8 MS. POLK: I do, Your Honor. And I don't --

09:43:08AM 9 THE COURT: Do you have any issue with it?

09:43:10AM 10 MS. POLK: No, Your Honor. Thank you.

09:43:12AM 11 THE COURT: All right.

09:43:14AM 12 MS. POLK: Your Honor, I did want to respond
 09:43:16AM 13 to the suggestion that suddenly the state has an
 09:43:18AM 14 obligation to make proffers as to expected
 09:43:20AM 15 testimony. The state has no obligation to do that.
 09:43:22AM 16 The rules of evidence clearly govern how witnesses
 09:43:24AM 17 are examined in the courtroom. And we will abide
 09:43:26AM 18 by the rules of evidence.

09:43:28AM 19 But to suddenly add to the state's burden
 09:43:30AM 20 a proffer to the Court and to defense counsel is
 09:43:32AM 21 completely unwarranted. They have the right to
 09:43:34AM 22 object when witnesses are testifying. And the
 09:43:36AM 23 Court would rule on objections.

09:43:38AM 24 If it becomes a problem, then the Court
 09:43:40AM 25 can rule more broadly. But clearly the rules of

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09:43:53AM 1 evidence govern how witnesses testify, and we will
 09:43:55AM 2 abide by that.

09:43:57AM 3 Additionally, Your Honor, the defense has
 09:43:59AM 4 had the opportunity to interview all those
 09:44:01AM 5 witnesses and to put the burden -- shift it from
 09:44:03AM 6 them, to interview witnesses, to find out what
 09:44:05AM 7 they're going to say and somehow shift it to the
 09:44:07AM 8 state and requiring us to make some sort of proffer
 09:44:09AM 9 in advance of trial is not supported by the Rules.

09:44:11AM 10 THE COURT: The type of testimony that would
 09:44:13AM 11 not be appropriate would be estimates of how many
 09:44:15AM 12 people were in medical distress. When we were
 09:44:17AM 13 conducting the 404(b) hearing and people were
 09:44:19AM 14 looking at the photos and seeing different things,
 09:44:21AM 15 that was not accurate. Questionable testimony, it
 09:44:23AM 16 seemed to me.

09:44:25AM 17 I'm talking about actual foundation of
 09:44:27AM 18 what people actually observed and having a sign,
 09:44:29AM 19 such as vomiting, an indication.

09:44:31AM 20 It's not a question of notice. And
 09:44:33AM 21 that's not the issue right now. And that was taken
 09:44:35AM 22 care of in the 404(b). It has to do with
 09:44:37AM 23 causation. And the only way that's meaningful is
 09:44:39AM 24 if there is actual testimony that talks about what
 09:44:41AM 25 the effects -- the physical and mental effects

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09 45 24AM 1 were. And if those are being conveyed through lay
09 45 27AM 2 witnesses, it has to be in accordance with
09 45 30AM 3 Rule 701(b).

09 45 33AM 4 It just cannot be a general estimate
09 45 36AM 5 about people were passed out all over the place or
09 45 39AM 6 whatever it might be. No. It has to be confined
09 45 42AM 7 to what was actually observed. And it's a real
09 45 45AM 8 risk to the trial if somebody gets on the stand and
09 45 48AM 9 it's emotional and doesn't stay within the confines
09 45 51AM 10 of what would be admissible as the causation issue
09 45 54AM 11 has now been articulated.

09 46 02AM 12 Does that help a bit in terms of what I
09 46 05AM 13 have set forth as the guideline, Mr. Li?

09 46 12AM 14 MR. LI: One moment, Your Honor.

09 46 30AM 15 Your Honor, I'm just going to make this
09 46 32AM 16 record. I understand -- I think I understand the
09 46 34AM 17 Court's ruling.

09 46 38AM 18 The state has to prove beyond a
09 46 41AM 19 reasonable doubt that there was not a superseding,
09 46 44AM 20 intervening cause. The fact that somebody threw
09 46 47AM 21 up, let's say, in 2008 or 2005 -- let's make it
09 46 50AM 22 2005. That's four years before the 2009 ceremony.
09 46 53AM 23 A lot of things can happen between 2005 and 2009.
09 47 04AM 24 A lot of maintenance can get done. A lot of
09 47 08AM 25 different things can happen to tarps and what have

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09 47 12AM 1 you in a wood shed.

09 47 14AM 2 That is also true within a month, within
09 47 17AM 3 two months, within three months. People manage
09 47 19AM 4 their property and they do things and they don't
09 47 22AM 5 think about what their -- you know -- they're not
09 47 24AM 6 thinking about the sweat lodge, for instance, and
09 47 26AM 7 what might happen.

09 47 28AM 8 And the idea that somebody threw up
09 47 32AM 9 in 2008 therefore proves that it couldn't have been
09 47 38AM 10 some sort of toxin in the dirt, even though
09 47 40AM 11 everyone else thought it was or toxin in the tarp
09 47 42AM 12 or something somebody ate -- there is a logical gap
09 47 48AM 13 there, Your Honor. And it's up to -- the state has
09 47 51AM 14 to -- you know -- it's the state's burden here to
09 47 53AM 15 prove that there wasn't an intervening cause.

09 47 57AM 16 So while I understand the Court's ruling,
09 48 00AM 17 there is a -- there's a 403 objection here and a
09 48 05AM 18 relevance objection about the prior incidents.
09 48 08AM 19 Because -- you know -- the fact that something
09 48 13AM 20 happened in 2005 doesn't mean -- you know -- may
09 48 15AM 21 have no relevance whatsoever in terms of causation.

09 48 20AM 22 And I understand the Court's ruling on
09 48 24AM 23 knowledge. It may have no relevance at all in
09 48 30AM 24 terms of causation in 2009. 2008 is a year away
09 48 30AM 25 from 2009. A lot of things happen between there.

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09 48 34AM 1 There may be literally no relevance at all.

09 48 37AM 2 And yet there is a potential prejudice in
09 48 40AM 3 which, as the Court identified, there are going to
09 48 42AM 4 be -- there are going to be some emotional folks up
09 48 45AM 5 here testifying. And, as I said, there are going
09 48 47AM 6 to be a few with a stake in the matter who are
09 48 51AM 7 going to say some fairly strong things.

09 48 54AM 8 THE COURT: Well, if they're being put on the
09 48 57AM 9 stand for an ulterior purpose, that's going to be a
09 49 01AM 10 problem. They've got --

09 49 08AM 11 MR. LI: I mean, just by way of example,
09 49 10AM 12 you're going to have Mr. Mercer up there.
09 49 13AM 13 Mr. Mercer could conceivably testify, in 2008 I saw
09 49 16AM 14 it. It was horrible. There were people down,
09 49 19AM 15 et cetera. Mr. Mercer is also the person on the
09 49 21AM 16 night of the incident who says I think it was the
09 49 23AM 17 wood.

09 49 26AM 18 THE COURT: With regard to people who have
09 49 28AM 19 been to other sweat lodge events, there's already
09 49 34AM 20 been a discussion in terms of framing testimony as
09 49 37AM 21 to the 2009. The frame of reference would be what
09 49 41AM 22 they had. So that's another instance that's not
09 49 44AM 23 404(b) type information. It has to do with how
09 49 48AM 24 that person is interpreting the 2009 sweat lodge.
09 49 53AM 25 So there is evidence in that fashion.

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09 49 56AM 1 These other issues you're raising,
09 49 59AM 2 Mr. Li, those are things that are taken care of
09 50 03AM 3 through cross-examination, through other evidence.
09 50 04AM 4 You indicated you will be presenting evidence. And
09 50 07AM 5 I will watch carefully. It has to stay on line.
09 50 11AM 6 And I can't imagine there would really be very much
09 50 14AM 7 testimony along those lines because, as I've
09 50 17AM 8 indicated, there has to be solid foundation for it.
09 50 20AM 9 There has to be a real observation. It has to fit
09 50 23AM 10 within the Rule, 701.

09 50 25AM 11 MR. LI: And what I would ask, again,
09 50 27AM 12 Your Honor, is that if that's the Court's ruling,
09 50 29AM 13 that we have that discussion about the foundation
09 50 32AM 14 at least somewhat outside the presence of the jury
09 50 38AM 15 rather than just throwing it up there and then
09 50 40AM 16 having people have to jump up and down and object
09 50 43AM 17 to things.

09 50 45AM 18 THE COURT: We'll handle it in the normal
09 50 48AM 19 trial fashion. And if there is an early objection
09 50 51AM 20 and we have to break and discuss the limitations of
09 50 55AM 21 the ruling, we'll do that. But we'll be very
09 50 59AM 22 attentive to that potential problem.

09 51 04AM 23 Anything else on that issue?

09 51 08AM 24 MR. LI: No, Your Honor. Thank you.

09 51 10AM 25 MS. POLK: Your Honor, I do have a second

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09 51 12AM 1 issue to raise.

09 51 13AM 2 THE COURT: Okay.

09 51 13AM 3 MS. POLK: I do just want to briefly respond

09 51 14AM 4 to the statement by Mr. Li that the state has to

09 51 15AM 5 prove beyond a reasonable doubt that there was not

09 51 16AM 6 a supervening cause. I believe the law is that is

09 51 17AM 7 only if the defendant raises prima facie evidence

09 51 18AM 8 that there is some other cause. The state

09 51 19AM 9 obviously doesn't have to disprove any possible

09 51 20AM 10 negative out there. But I think that's an issue

09 51 21AM 11 for another day.

09 51 22AM 12 Your Honor, I want to just briefly ask

09 51 23AM 13 the Court to remind Mr. Li that the opening

09 51 24AM 14 statement is not time for argument. Yesterday he

09 51 25AM 15 spent about the last 10 minutes in, essentially,

09 51 26AM 16 what was argument. He was waiving the blue book,

09 51 27AM 17 the Constitution, and talking to the jury about

09 51 28AM 18 that is your right in the United States to believe

09 51 29AM 19 what you want to believe, and clearly had moved

09 51 30AM 20 into what is argument.

09 51 31AM 21 The purpose of the opening statement is

09 51 32AM 22 to outline for the jury where the cases are going

09 51 33AM 23 to go. And I didn't stand up and object near the

09 51 34AM 24 end of the day. But I would ask that Mr. Li be

09 51 35AM 25 reminded that this is an opening statement. This

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09 52 22AM 1 is not argument.

09 52 23AM 2 And then, secondly, the state had

09 52 24AM 3 approached and objected to the use of what we

09 52 25AM 4 believe to be hearsay exhibits. Mr. Ray told the

09 52 26AM 5 Court that it was not hearsay because he was not

09 52 27AM 6 offering information about toxins to prove the

09 52 28AM 7 truth of the matter asserted.

09 52 29AM 8 Today in his argument he has clearly told

09 52 30AM 9 the Court that they have the right to argue to the

09 52 31AM 10 jury that something else could have killed our

09 52 32AM 11 three victims. Clearly now he is saying he is

09 52 33AM 12 offering that evidence to prove the truth of the

09 52 34AM 13 matter asserted.

09 52 35AM 14 If Mr. Li is going to get up today and

09 53 00AM 15 finish his opening statement, I would ask that he

09 53 01AM 16 be reminded that he cannot use -- unless he has a

09 53 02AM 17 good-faith basis to believe that these exhibits

09 53 03AM 18 could be admitted, that he should not be showing

09 53 04AM 19 them to the jury. And there is no good-faith basis

09 53 05AM 20 to believe that hearsay -- whether it's in the form

09 53 06AM 21 of a transcript or an audio, there is no good-faith

09 53 07AM 22 basis to believe that any of that hearsay would be

09 53 08AM 23 coming in.

09 53 09AM 24 Thank you, Your Honor.

09 53 10AM 25 And I do have one other issue --

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09 53 24AM 1 TE COURT: Uh-huh.

09 53 25AM 2 MS. POLK: -- if you want to --

09 53 26AM 3 THE COURT: Why don't you go ahead.

09 53 27AM 4 MS. POLK: My third issue is just -- I'm

09 53 28AM 5 looking for some direction from the Court about

09 53 29AM 6 what to do about witnesses who wish not to appear

09 53 30AM 7 on live TV.

09 53 31AM 8 THE COURT: Do you anticipate that today?

09 53 32AM 9 MS. POLK: No. But I do anticipate later this

09 53 33AM 10 week. We've been contacted by several witnesses

09 53 34AM 11 now.

09 53 35AM 12 THE COURT: There needs to be a hearing -- an

09 53 36AM 13 in-person hearing. And that will not be on camera.

09 53 37AM 14 As I've indicated, it would not make sense to do it

09 53 38AM 15 otherwise. That's how that will be handled.

09 53 39AM 16 MS. POLK: Do you anticipate a hearing before

09 53 40AM 17 each one individually?

09 53 41AM 18 THE COURT: Yes. I think that's what the rule

09 53 42AM 19 requires.

09 53 43AM 20 MS. POLK: That's fine. Thank you.

09 53 44AM 21 THE COURT: Mr. Li, the points raised by

09 53 45AM 22 Ms. Polk?

09 53 46AM 23 MR. LI: Your Honor, I will confine my

09 53 47AM 24 arguments to the proper boundaries. I would note

09 53 48AM 25 that Ms. Polk argued a little in her opening

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09 54 19AM 1 statements that the discussion about the

09 54 20AM 2 Constitution and a person's right to believe

09 54 21AM 3 whatever they want to believe was in direct

09 54 22AM 4 response to an hour and a half argument by Ms. Polk

09 54 23AM 5 that Mr. Ray is some sort of cult leader.

09 54 24AM 6 And I don't think there is anything wrong

09 54 25AM 7 with facing that directly and saying listen, ladies

09 54 26AM 8 and gentlemen. Whatever you may think about what

09 54 27AM 9 Mr. Ray says in these little clip snippets that

09 54 28AM 10 Ms. Polk decided to edit and play for you, you

09 54 29AM 11 can't judge somebody for those. I'm simply

09 54 30AM 12 reminding the jury of their duty under the

09 54 31AM 13 Constitution to leave prejudice and somebody's

09 54 32AM 14 beliefs outside of the courtroom. That's entirely

09 54 33AM 15 proper, Your Honor.

09 54 34AM 16 THE COURT: With regard to argument, an

09 54 35AM 17 attorney has to be able to frame the evidence. And

09 54 36AM 18 just to say these are the facts that we believe are

09 54 37AM 19 going to be proved doesn't do much without some

09 54 38AM 20 legal framework. And that comes out in terms of

09 54 39AM 21 argument sometimes.

09 54 40AM 22 There was argument on both sides, Mr. Li.

09 54 41AM 23 There was quite a bit. Be aware of that. It's

09 54 42AM 24 time to --

09 54 43AM 25 MR. LI: I will, Your Honor.

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09 55 43AM 1 THE COURT: -- to take the evidence -- and as
09 56 44AM 2 indicated, it has to be framed. I understand that.
09 55 50AM 3 It is to be the outline of what you anticipate to
09 56 44AM 4 be the evidence.

09 56 44AM 5 With regard to hearsay, this has been an
09 55 57AM 6 unusual opening statement really from both sides
09 56 01AM 7 where there is so much anticipated evidence
09 56 07AM 8 actually displayed in the opening. That's unusual.
09 56 10AM 9 I've had at pretrial attorneys request maybe a
09 56 14AM 10 chart or maybe one photograph. The attorneys were
09 56 18AM 11 doing it that way, and that's okay. There were not
09 56 21AM 12 any objections. What came up, though, is a rather
09 56 25AM 13 unusual circumstance of the exhibits Mr. Li
09 56 33AM 14 exhibiting having potential admissibility for being
09 56 40AM 15 an exhibit -- or having this offered not for the
09 56 46AM 16 truth of the matter asserted.

09 56 47AM 17 The form it was in seemed to be such that
09 56 52AM 18 a juror might say, well, that's what this person is
09 56 54AM 19 saying happened, that that was the cause. But as I
09 56 58AM 20 recall the language of this, if we only thought it
09 57 01AM 21 could be this or it could be that. So it really
09 57 04AM 22 wasn't much of an assertion. It was an idea of
09 57 07AM 23 what might have happened.

09 57 08AM 24 And it would be admissible not for the
09 57 11AM 25 truth of what might have actually happened or did
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09 57 14AM 1 happen but for alerting people involved in the
09 57 19AM 2 investigation that these are other leads, other
09 57 22AM 3 things to look at. So it does have potential
09 57 25AM 4 admissibility.

09 57 26AM 5 But there is no way to give a 105
09 57 28AM 6 limiting instruction to a jury before there is even
09 57 31AM 7 any evidence actually admitted. I guess there is
09 57 35AM 8 no other evidence that's going to be displayed.

09 57 38AM 9 MR. LI: Yes, Your Honor. We have two more
09 57 40AM 10 clips from yesterday, but we simply just didn't
09 57 42AM 11 play them. This was -- it had to do with the rat
09 57 45AM 12 poison and the wood. And we did not play it in
09 57 48AM 13 deference to the Court's sensibilities about this
09 57 52AM 14 issue.

09 57 53AM 15 For my part here, I think I have one
09 57 55AM 16 tape. But it's Mr. Ray in the sort of pregame
09 57 59AM 17 speech at the sweat lodge. And beyond that, just
09 58 01AM 18 some photographs, Nothing else.

09 58 03AM 19 THE COURT: Okay. You're able -- you're going
09 58 04AM 20 to be able to present what you want to in the rest
09 58 06AM 21 of your opening?

09 58 08AM 22 MR. LI: Yes, Your Honor.

09 58 08AM 23 THE COURT: Okay. All right. Things I wanted
09 58 14AM 24 to bring up. The 90-minute issue, taking a recess.
09 58 17AM 25 It's really necessary to do that. It's a long

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09 58 21AM 1 trial that's anticipated. Ms. Hunt does not have a
09 58 25AM 2 backup right away. And regardless of that, that's
09 58 30AM 3 just the rule. And that's what needs to be done.

09 58 33AM 4 And I think you know from conducting the
09 58 35AM 5 404(b) hearing, I welcome attorneys to ask for a
09 58 44AM 6 recess when it's close enough. I respect that. I
09 58 48AM 7 do not want to interrupt the attorneys in the case.
09 58 52AM 8 I want to be as unobtrusive as possible. So please
09 58 59AM 9 be mindful of the 90 minutes, and let me know so I
09 59 03AM 10 don't have to interrupt. I don't want to do that.

09 59 06AM 11 Also at 5:00 o'clock, it needs to be
09 59 08AM 12 wrapping down about five till. And if you don't do
09 59 10AM 13 it, then I have to interrupt. And I have a feeling
09 59 14AM 14 that these -- I'd like people to take a minute and
09 59 18AM 15 read that note so we're not distracted. I need to
09 59 20AM 16 read that too because it gets to what I -- exactly
09 59 20AM 17 to what I was going to talk about.

09 59 30AM 18 I was going to start today with the jury
09 59 33AM 19 by asking them if there were any issues with the
09 59 36AM 20 admonition, if anything came up. And then if --
09 59 42AM 21 you know -- I had asked them that. And then I
09 59 43AM 22 pursue it to say if it was anything more than
09 59 47AM 23 something casual, anything that they felt might
09 59 50AM 24 interfere with their ability to consider just the
09 59 55AM 25 evidence, and then move ahead. I think that's
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09 59 57AM 1 necessary in this trial every morning. I think it
10 00 00AM 2 just has to be done.

10 00 02AM 3 And this note that we got from -- you
10 00 04AM 4 know -- one of the jurors about seeing a picture of
10 00 10AM 5 a sweat lodge with the word -- it has -- I saw it
10 00 50AM 6 again. I saw a picture of the sweat lodge with the
10 00 54AM 7 word "toxin" in the headline on the front page of
10 00 58AM 8 the paper before I could look away.

10 01 02AM 9 I want the jurors to follow the
10 01 04AM 10 instruction I gave them during the preliminaries.
10 01 06AM 11 I want to know every time they think there is an
10 01 08AM 12 issue. I want that out. But I do want to handle
10 01 12AM 13 things like this in this fashion. I'll just say I
10 01 17AM 14 don't see that as an issue. That's been talked
10 01 18AM 15 about. That's likely going to be evidence in the
10 01 21AM 16 case. It's already been raised here. But I don't
10 01 24AM 17 want to reduce in their eyes the importance of
10 01 29AM 18 letting us know each time there is some contact. I
10 01 32AM 19 think we have to do it that way.

10 01 34AM 20 Mr. Hughes, Ms. Polk.

10 01 36AM 21 MR. HUGHES: Your Honor, I agree. I think
10 01 37AM 22 that makes sense.

10 01 38AM 23 As a housekeeping matter, I noticed this
10 01 40AM 24 juror actually signed the juror's name on it. And
10 01 43AM 25 I know that at some point these are going in the

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10 01 47AM 1 record. I don't know if they're going to be
 10 01 49AM 2 separately sealed. That might be a good idea.
 10 01 50AM 3 THE COURT: Okay. And I'll read this into the
 10 01 51AM 4 record because I do want to protect the juror
 10 01 52AM 5 names. And I want to make sure that any minute
 10 01 59AM 6 entries that have gone out are restricted, that all
 10 02 02AM 7 attorneys and all people respect the respected
 10 02 05AM 8 minute entries.

10 02 07AM 9 You both understand that, don't you?

10 02 08AM 10 MR. HUGHES: Yes, Your Honor.

10 02 09AM 11 MR. LI: Yes, Your Honor.

10 02 09AM 12 THE COURT: Okay. And there are other
 10 02 10AM 13 attorneys that have that as well. And as officers
 10 02 13AM 14 of the court, I would -- they better be honoring
 10 02 16AM 15 those restrictions.

10 02 18AM 16 But in this particular one, I'll just
 10 02 21AM 17 read it. It's addressed to me.

10 02 23AM 18 This a.m. I saw a picture of the sweat
 10 02 26AM 19 lodge with the word "toxin" in the headline on the
 10 02 29AM 20 front page of The Courier before I could look away.

10 02 32AM 21 And then I'll just say right now the --
 10 02 35AM 22 well, I'll go ahead and seal it. There is no
 10 02 38AM 23 reason to have that now that it's in the record in
 10 02 41AM 24 full.

10 02 41AM 25 But normally juror questions will be -- I
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10 02 44AM 1 can just order it redacted. There is a mechanical
 10 02 48AM 2 issue there. The name and number is redacted, and
 10 02 51AM 3 that will be part of the record.

10 02 53AM 4 Mr. Li, do you agree with the handling of
 10 02 57AM 5 the -- every morning starting off with that?

10 02 59AM 6 MR. LI: I do.

10 02 59AM 7 THE COURT: Okay. I interrupted Ms. Polk
 10 03 09AM 8 during her statement because I had only noticed the
 10 03 10AM 9 microphone on the defense table. But then as I
 10 03 14AM 10 look through the equipment here, I see that it's a
 10 03 16AM 11 similar situation over there.

10 03 18AM 12 I've said before, I understand the
 10 03 20AM 13 priorities very well and the fairness of the trial,
 10 03 23AM 14 and that cannot be disrupted. I intended to have a
 10 03 33AM 15 microphone active and on the end of the table so
 10 03 38AM 16 the attorney addressing the Court, a witness, if
 10 03 46AM 17 you choose to examine from the table, would have a
 10 03 50AM 18 microphone that would give the full benefit of this
 10 03 58AM 19 courtroom, the very good equipment, acoustics. And
 10 04 09AM 20 I'm concerned about what you've done with the
 10 04 11AM 21 microphones. And I think they need to be on the
 10 04 15AM 22 corners of the table.

10 04 15AM 23 Is there really some reason to do that?

10 04 18AM 24 MR. KELLY: I did that, Judge. I think for
 10 04 21AM 25 the witnesses we don't have a problem moving it

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10 04 25AM 1 back in front of Mr. Li.

10 04 27AM 2 THE COURT: Okay. Whoever is going to do the
 10 04 32AM 3 questioning and make objections, I want the
 10 04 34AM 4 microphone there. If you need to push the button,
 10 04 37AM 5 push the button. Please just get used to it.

10 04 40AM 6 Ms. Polk, will you do that, please?

10 04 42AM 7 MS. POLK: Yes, Your Honor.

10 04 43AM 8 THE COURT: Thank you.

10 04 44AM 9 There was another request from media
 10 04 47AM 10 about releasing exhibits. My practice in the past
 10 04 53AM 11 has been to release the exhibits once they're
 10 04 57AM 12 actually admitted. The jury knows about them.
 10 05 00AM 13 There is not a risk of tainting the jury pool by
 10 05 03AM 14 evidence they already have.

10 05 04AM 15 And you each have an email on the
 10 05 06AM 16 mechanism for that. I don't know if you really
 10 05 08AM 17 want to have any input. Whatever is easiest is the
 10 05 12AM 18 way I looked at it. When you have a chance to look
 10 05 15AM 19 at that email, go ahead and look at it. If you
 10 05 17AM 20 have any thoughts, let me know.

10 05 25AM 21 And I wanted to know if there are other
 10 05 28AM 22 evidentiary issues that weren't addressed in the
 10 05 29AM 23 pretrial. Number of things going on yesterday, but
 10 05 33AM 24 I noticed looking through that there was a question
 10 05 38AM 25 at one time about cross-examination and how -- it's

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10 05 41AM 1 down the line, but this is just an example.

10 05 44AM 2 Cross-examination in the area of the meeting. That
 10 05 49AM 3 was the subject of the discovery motion. I thought
 10 05 54AM 4 all those motions were kind of put off until trial
 10 05 57AM 5 and we were going to look at it.

10 05 59AM 6 But if there is any active motions on
 10 06 01AM 7 evidence or otherwise that I need to be addressing,
 10 06 04AM 8 I need to know. I don't want to have a bench
 10 06 08AM 9 conference that we can avoid by discussing it
 10 06 10AM 10 before we get started.

10 06 12AM 11 Is there anything like that that's coming
 10 06 13AM 12 up where you need a ruling now on it?

10 06 15AM 13 MS. POLK: Not that I'm aware of, Your Honor.

10 06 17AM 14 THE COURT: Mr. Kelly?

10 06 19AM 15 MR. KELLY: Judge, I do believe there are
 10 06 24AM 16 several concerns that we had which were outlined in
 10 06 30AM 17 a motion filed last Friday, provided a copy to the
 10 06 36AM 18 Court. And it relates to specific exhibits marked
 10 06 38AM 19 by the State of Arizona.

10 06 39AM 20 THE COURT: I've seen that and the response.
 10 06 43AM 21 Is that something that would present itself today?
 10 06 47AM 22 If the state's response was we need to see what the
 10 06 50AM 23 evidence is and address it as a trial matter -- if
 10 06 53AM 24 you have something specific -- I don't have it here
 10 06 58AM 25 on the bench with me. But I'm aware of that.

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10 06 59AM 1 MR. KELLY: Well, of course, we don't know
 10 07 00AM 2 what the State of Arizona is going to present --
 10 07 00AM 3 THE COURT: Right.
 10 07 00AM 4 MR. KELLY: -- in terms of proffered exhibits.
 10 07 06AM 5 But you asked the question is there anything
 10 07 06AM 6 remaining? In our mind, some of these issues
 10 07 10AM 7 identified by those specific exhibits are, in
 10 07 12AM 8 fact -- or do, in fact, remain. We believe our
 10 07 17AM 9 objection is well-founded. Obviously we can wait
 10 07 21AM 10 to see what happens on a particular witness, but I
 10 07 23AM 11 remind the Court of that.

10 07 24AM 12 And also, Judge, there is a related
 10 07 26AM 13 concern. And I haven't personally looked at the
 10 07 34AM 14 photographs marked by the State of Arizona. But in
 10 07 38AM 15 the copy that I have, there is an exhibit tag on
 10 07 42AM 16 the front of the photograph.

10 07 46AM 17 And our concern, Judge, is, first of all,
 10 07 49AM 18 that adequate foundation could not be laid for the
 10 07 53AM 19 admissibility of a photograph that's been altered.
 10 07 55AM 20 And secondly and more importantly that unduly
 10 07 56AM 21 emphasizes a particular photograph over others that
 10 07 59AM 22 are marked in the traditional fashion with the --
 10 08 02AM 23 with the Court's exhibit numbers.

10 08 04AM 24 So, again, the copy that I received had a
 10 08 10AM 25 tag on the front of it that said exhibit number

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10 08 13AM 1 such and such. And that would be an objection if
 10 08 15AM 2 the actual exhibit is marked in that fashion.

10 08 23AM 3 THE COURT: Ms. Polk, what about the marking
 10 08 25AM 4 of exhibits?

10 08 26AM 5 MS. POLK: Your Honor, if I can approach, I
 10 08 28AM 6 can show you --

10 08 29AM 7 THE COURT: Sure.

10 08 29AM 8 MS. POLK: -- an example.

10 08 31AM 9 THE COURT: Yes.

10 08 36AM 10 Thank you.

10 08 42AM 11 MS. POLK: And, Judge, we -- the state did add
 10 08 43AM 12 those to the front. They are sticky. We can pull
 10 08 50AM 13 them off if the Court does not believe they belong
 10 08 52AM 14 there. What we intended to do is write the exhibit
 10 08 55AM 15 number on it so that I can read it. The exhibit
 10 08 57AM 16 tags on the back are just very difficult for me to
 10 09 00AM 17 read and for witnesses to read.

10 09 03AM 18 MR. KELLY: The concern, Judge, is not that --
 10 09 05AM 19 my eyesight is probably worse than anyone in this
 10 09 09AM 20 courtroom when it comes to reading those little
 10 09 10AM 21 exhibit numbers. If you want to put that tag on
 10 09 13AM 22 the back, I have no problem.

10 09 17AM 23 But the concern is that if a few exhibits
 10 09 20AM 24 in this case have an exhibit number on the face,
 10 09 20AM 25 that unduly emphasizes that exhibit during

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10 09 23AM 1 deliberation. If it were admitted. If they're
 10 09 26AM 2 placed on the back, no problem.

10 09 33AM 3 THE COURT: I see what you mean. It should be
 10 09 36AM 4 on all of them or none of them. And that maybe on
 10 09 37AM 5 this one it doesn't make any difference if it's
 10 09 40AM 6 there. Maybe in another one because of lighting or
 10 09 43AM 7 what might be in the picture it could interfere.

10 09 45AM 8 Ms. Polk, if you could do that. Just
 10 09 47AM 9 peel them off and put them on the back.

10 09 50AM 10 MS. POLK: Yes, Your Honor.

10 09 51AM 11 THE COURT: Let's do that. Thank you.

10 10 00AM 12 Anything else?

10 10 01AM 13 MR. KELLY: May I have just a minute?

10 10 03AM 14 THE COURT: Of course.

10 10 24AM 15 MR. KELLY: Judge -- you know -- of course, I
 10 10 30AM 16 now have the benefit of the motion in front of me,
 10 10 32AM 17 the motion to exclude and objections to exhibits.
 10 10 37AM 18 I believe what Ms. Polk's position is is that she's
 10 10 40AM 19 going to handle this issue individually by witness,
 10 10 44AM 20 which is fine. But, again, I think some of these
 10 10 48AM 21 matters are clearly not admissible given the prior
 10 10 51AM 22 orders of this Court as well as basic rules of
 10 10 56AM 23 evidence. So I guess we'll wait and see.

10 10 59AM 24 THE COURT: I'm glad the issue has been
 10 11 02AM 25 brought up. I don't want to have situations where

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10 11 06AM 1 there are questions about what exhibit is being
 10 11 10AM 2 presented and the other side hasn't seen the
 10 11 14AM 3 exhibit. Everything works much more smoothly if
 10 11 18AM 4 the attorneys are addressing those things ahead of
 10 11 20AM 5 time.

10 11 22AM 6 So along those lines, Ms. Polk, if there
 10 11 27AM 7 is even something this morning and you've got some
 10 11 28AM 8 exhibits and there is a possible issue about that,
 10 11 32AM 9 I'd like the defense to see that. And we can take
 10 11 35AM 10 care of that and not just have everything come to a
 10 11 37AM 11 halt to have a bench conference.

10 11 44AM 12 Is there something like that anticipated
 10 11 47AM 13 today?

10 11 47AM 14 MS. POLK: Your Honor, I do believe the first
 10 11 49AM 15 witness there is that the defense had objected to
 10 11 53AM 16 the client files. These are the documents that
 10 11 58AM 17 witnesses filled out that indicate their purchase
 10 12 04AM 18 of the Spiritual Warrior seminar. And then they
 10 12 08AM 19 also indicate that the witnesses purchased for the
 10 12 11AM 20 payment for other events that Mr. Ray that they had
 10 12 15AM 21 attended.

10 12 16AM 22 When the witnesses testify, I intend to
 10 12 16AM 23 ask them about how they came to know of Mr. Ray,
 10 12 21AM 24 had they attended other events, did they attend the
 10 12 25AM 25 Spiritual Warrior, how much did they pay for the

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10:12:27AM 1 Spiritual Warrior. And all of that would be in
10:12:30AM 2 these documents that the state has marked as
10:12:33AM 3 witness -- or client files.

10:12:36AM 4 THE COURT: The attorneys are exchanging
10:12:39AM 5 anticipated witnesses. I know that the state's
10:12:48AM 6 proceeding now.

10:12:48AM 7 But that's happening; correct? You know
10:12:51AM 8 who is going to testify today?

10:12:53AM 9 MR. KELLY: I do, Judge.

10:12:54AM 10 THE COURT: So there we are.

10:12:55AM 11 And, Mr. Kelly, you didn't bring up this
10:12:58AM 12 issue. And this is exactly the kind of thing I
10:13:00AM 13 want to take care of now and not be up here
10:13:04AM 14 doing --

10:13:05AM 15 MR. KELLY: Judge, I agree. My position is
10:13:08AM 16 simply I don't know what's in the government's
10:13:10AM 17 mind. So I read your pretrial ruling in regards to
10:13:15AM 18 the cost of other seminars offered by JRI and how
10:13:21AM 19 it was not -- my understanding is it's not
10:13:22AM 20 admissible in this case.

10:13:25AM 21 That particular exhibit was marked. It
10:13:27AM 22 was exchanged. I have a copy of it. But it's news
10:13:31AM 23 to me that Ms. Polk was going to try to admit that
10:13:35AM 24 exhibit during Ms. Phillips' testimony this
10:13:38AM 25 afternoon because of the content of the exhibit.

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10:13:42AM 1 And she outlined the testimony, which I understand,
10:13:46AM 2 how many other events did you attend? How did you
10:13:48AM 3 learn about Mr. Ray? That's fine. But how much
10:13:52AM 4 did you pay on those prior events? Again, I'd ask
10:13:55AM 5 the relevance of that.

10:13:57AM 6 THE COURT: My ruling specifically went to
10:13:59AM 7 amounts paid for the 2009 event. And related costs
10:14:05AM 8 would be admissible as well, the food and lodging
10:14:09AM 9 and those things.

10:14:12AM 10 But with regard to the others -- is that
10:14:15AM 11 the only objection you have to that exhibit?

10:14:17AM 12 MR. KELLY: And I don't have the exhibit in
10:14:19AM 13 front of me, Judge. But my recollection is that it
10:14:22AM 14 has dollar amounts paid for other events. And yes.
10:14:27AM 15 That is the objection. If I'm not correct,
10:14:34AM 16 Ms. Polk has the exhibit.

10:14:37AM 17 THE COURT: Okay.

10:14:37AM 18 Ms. Polk?

10:14:38AM 19 MS. POLK: Your Honor, it does have dollar
10:14:40AM 20 amounts. But that's because the Spiritual Warrior
10:14:44AM 21 seminar in some instances was sold to a participant
10:14:50AM 22 as part of a package. And so the package would
10:14:55AM 23 reflect the total cost. And then the paperwork
10:14:58AM 24 would break down how much was allocated to each
10:14:58AM 25 event that a witness attended -- or participants

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10:15:02AM 1 attended.

10:15:03AM 2 And then additionally, Your Honor, I
10:15:05AM 3 would add that many of these witnesses will testify
10:15:08AM 4 that because of this relationship where they have
10:15:13AM 5 attended prior events, that Mr. Ray has led them
10:15:16AM 6 through other activities that they believe that
10:15:19AM 7 they have benefited from and that he has safely led
10:15:23AM 8 them through other activities that they because of
10:15:25AM 9 that prior history had come to trust him. And
10:15:28AM 10 that's their mind-set, then, as they participate in
10:15:32AM 11 the events of the Spiritual Warrior seminar.

10:15:35AM 12 They have this history with him. The
10:15:38AM 13 history is reflected in the client files. And
10:15:40AM 14 because of that history, then, they trust that all
10:15:42AM 15 of the activities of the week of the Spiritual
10:15:46AM 16 Warrior will be safe -- goes to the mind-set.

10:15:48AM 17 And finally, Your Honor, in Mr. Li's
10:15:50AM 18 opening he is the one that told the jury -- that
10:15:54AM 19 brought up the contract that Mr. Ray had with Angel
10:15:57AM 20 Valley, told the jury that Angel Valley was paid by
10:16:00AM 21 Mr. Ray \$107,000, I believe, was the amount for
10:16:05AM 22 this event.

10:16:06AM 23 So he already has introduced through the
10:16:08AM 24 opening more information about the financial
10:16:11AM 25 benefit or the financial relationship or status of

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10:16:17AM 1 Mr. Ray and of Angel Valley, so he is making the
10:16:20AM 2 financial information relevant.

10:16:21AM 3 What witnesses experienced when they went
10:16:24AM 4 to Spiritual Warrior and what is on the audio is
10:16:27AM 5 this constant upsell. When they're doing some of
10:16:30AM 6 these events, they're in the middle of a lecture
10:16:33AM 7 with Mr. Ray, he's trying to sell them another
10:16:36AM 8 package. And that was the evidence through the
10:16:38AM 9 audio as well.

10:16:39AM 10 THE COURT: Can I see a copy of the exhibit,
10:16:41AM 11 please?

10:16:44AM 12 MR. LI: Your Honor, if I could just address
10:16:45AM 13 that small point there. You know, the reason
10:16:48AM 14 why -- the only issue about the -- what Angel
10:16:52AM 15 Valley got for 2009 is in compliance with the
10:16:54AM 16 Court's ruling, that the only financial issues
10:16:57AM 17 are 2009.

10:16:58AM 18 And that cost of \$107,000 that Angel
10:17:05AM 19 Valley Retreat charged related only to 2009, which
10:17:08AM 20 the Court found was admissible, which Ms. Polk
10:17:12AM 21 intends to solicit testimony relating to. It has
10:17:16AM 22 nothing to do with any prior events or any
10:17:18AM 23 postevent. It has to do with only four corners of
10:17:21AM 24 this indictment.

10:17:35AM 25 And I'm reminded by Ms. Do that I think
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10:17:39AM 1 the Court's explicit ruling was that the, quote,
 10:17:44AM 2 unquote, selling practices, the -- you know --
 10:17:47AM 3 up -- I didn't catch the term that Ms. Polk used.
 10:17:50AM 4 Those are not relevant for this particular case. I
 10:17:53AM 5 think the Court explicitly ruled about that. And I
 10:17:56AM 6 would urge the Court to maintain that ruling.
 10:18:00AM 7 THE COURT: It's like the 404(b) motion. I
 10:18:03AM 8 dealt with what I was presented with. What was
 10:18:05AM 9 there I thought was the cost of the event --
 10:18:14AM 10 the 2009 event.

10:18:15AM 11 First of all, Ms. Polk, this type of
 10:18:18AM 12 exhibit would only be offered with regard to
 10:18:24AM 13 the 2009 participants; is that correct? That's the
 10:18:27AM 14 only intent you have, not anybody else?

10:18:31AM 15 MS. POLK: Correct.

10:18:41AM 16 THE COURT: It's relevant that people
 10:18:45AM 17 attended -- potentially -- I would make the call if
 10:18:48AM 18 it's relevant. Of course, the jury determines what
 10:18:51AM 19 evidence is to be given ultimate relevance and
 10:18:57AM 20 weight. But the fact of attending other events and
 10:19:06AM 21 seminars, that's admissible.

10:19:16AM 22 My concern is -- and it hasn't been
 10:19:19AM 23 directly addressed -- if it calls attention to a
 10:19:22AM 24 lot of numbers that just hasn't been presented
 10:19:27AM 25 before.

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10:19:29AM 1 MR. LI: Your Honor, actually, I believe that
 10:19:31AM 2 that has been directly addressed by a motion filed
 10:19:34AM 3 by the defense, I think motion in limine 2.

10:19:37AM 4 THE COURT: Financial practices, yes.

10:19:38AM 5 MR. LI: Yes. But it also includes financial
 10:19:42AM 6 practices and cost of other seminars. That's the
 10:19:45AM 7 point I'm going to make.

10:19:45AM 8 THE COURT: There's -- continue.

10:19:51AM 9 MR. LI: The point is it's extraneous.

10:20:05AM 10 THE COURT: What is admissible is the
 10:20:08AM 11 attending of the other seminars. At this time with
 10:20:11AM 12 what I'm presented with, what was paid for the
 10:20:13AM 13 other seminars would not be, but actual attendance,
 10:20:16AM 14 that would be admissible. The amounts would have
 10:20:18AM 15 to be redacted.

10:20:20AM 16 And have you got the motion? I remember
 10:20:23AM 17 the ruling. It's this is the cost of this seminar.

10:20:27AM 18 MR. LI: Your Honor, the easiest way to deal
 10:20:29AM 19 with this would be simply to ask the witness how
 10:20:31AM 20 much they paid. If they could have their
 10:20:36AM 21 recollection refreshed by a redacted document but
 10:20:39AM 22 that this document would not be admitted.
 10:20:42AM 23 Redacted -- what you're going to get is a bunch of
 10:20:45AM 24 black marks on it. And the jurors are going to be
 10:20:45AM 25 left to wonder what's under the black marks.

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10:20:47AM 1 In the only evidence the state actually
 10:20:48AM 2 wants is how much they paid for the seminar, they
 10:20:50AM 3 can simply ask for it. These folks will know.

10:20:54AM 4 THE COURT: Miss Polk?

10:20:55AM 5 MS. POLK: Your Honor, first of all, I do have
 10:20:57AM 6 the Court's order of January 13, 2011. And the
 10:21:00AM 7 Court addressed evidence of the defendant's general
 10:21:03AM 8 financial status. The state does not intend to
 10:21:07AM 9 elicit any evidence -- produce any evidence at this
 10:21:10AM 10 trial about his general financial status. That's
 10:21:12AM 11 what the defense has moved to preclude. We had
 10:21:15AM 12 indicated to you at that time that we do not intend
 10:21:18AM 13 to go there.

10:21:19AM 14 In fact, what the Court wrote in the
 10:21:21AM 15 minute entry is that based on the statements of
 10:21:23AM 16 counsel at oral argument, it appears the state may
 10:21:26AM 17 not intend to offer evidence of the defendant's and
 10:21:28AM 18 James Ray International's general financial
 10:21:32AM 19 condition.

10:21:33AM 20 In any event, then such evidence would
 10:21:35AM 21 have questionable relevance to the anticipated
 10:21:38AM 22 factual issues in this case and, at least with
 10:21:40AM 23 regard to the state's case in chief, would not be
 10:21:43AM 24 admissible after application of Rule 403.

10:21:46AM 25 The state agrees with that. We do not
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10:21:50AM 1 intend to offer evidence about his general
 10:21:52AM 2 financial status. But certainly how much a witness
 10:21:56AM 3 has paid over the course of their relationship with
 10:21:58AM 4 Mr. Ray to Mr. Ray for his seminars is relevant to
 10:22:02AM 5 their state of mind.

10:22:04AM 6 I believe the Court heard clips yesterday
 10:22:07AM 7 where Mr. Ray talks about your investments. What
 10:22:10AM 8 witnesses, their state of mind, their relationship
 10:22:13AM 9 with Mr. Ray, is a very financially heavy
 10:22:17AM 10 relationship. Witnesses paid lots of money over
 10:22:21AM 11 the course of the year -- the years to attend
 10:22:25AM 12 events.

10:22:26AM 13 In their mind, they have paid money.
 10:22:29AM 14 They are financially invested, and they want to get
 10:22:32AM 15 their money's worth. And it's the sum total of
 10:22:33AM 16 that relationship that the state intends to elicit
 10:22:37AM 17 from witnesses, including how much they paid to
 10:22:40AM 18 attend prior seminars as well.

10:22:43AM 19 MR. LI: Your Honor, if I may be heard. First
 10:22:46AM 20 of all, we'd stipulate to the cost of the Spiritual
 10:22:50AM 21 Warrior seminar. So we could just enter that
 10:22:51AM 22 stipulation if that's all they want to get into.

10:22:53AM 23 It now appears that they actually want to
 10:22:56AM 24 get into more. And the ruling that Ms. Polk cited
 10:22:58AM 25 actually had to do -- deal with a different issue,

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10 23 01AM 1 which was Mr. Ray's financial status.
 10 23 03AM 2 Okay. The issue that -- in the motion in
 10 23 06AM 3 limine we filed that is directly relevant to this
 10 23 08AM 4 relates to the sales practices and what have you of
 10 23 10AM 5 JRI.

10 23 14AM 6 And the Court ruled, which the state did
 10 23 17AM 7 not quote -- the Court ruled such evidence would
 10 23 19AM 8 present a high degree -- I'm sorry -- a high danger
 10 23 24AM 9 suggesting to the jury that a decision may be made
 10 23 26AM 10 on an improper basis. The jury's attention could
 10 23 29AM 11 be drawn from the actual anticipated issues in this
 10 23 31AM 12 criminal matter, issues involving proof of
 10 23 33AM 13 recklessness of conduct causing death to what some
 10 23 37AM 14 persons might consider distasteful business
 10 23 40AM 15 practices.

10 23 40AM 16 Evidence that amounts to personal
 10 23 42AM 17 perceptions and opinions regarding defendant's or
 10 23 46AM 18 JRI's sales practices is not admissible. That's
 10 23 48AM 19 the point that the motion that we filed relating to
 10 23 52AM 20 this particular issue is.

10 23 53AM 21 It's simply irrelevant what somebody has
 10 23 56AM 22 paid over a course of time. They can say, yeah,
 10 23 58AM 23 I've attended a number of seminars. They've been
 10 24 03AM 24 useful to me, they have not been useful to me,
 10 24 06AM 25 whatever they want to say. I want to be there. I

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10 24 08AM 1 don't want to be there. They can say that too.
 10 24 11AM 2 They can say that I paid -- you know -- \$9,000 or
 10 24 13AM 3 whatever the actual amount is to attend the 2009
 10 24 16AM 4 Spiritual Warrior seminar.

10 24 17AM 5 I just think the state wants to -- you
 10 24 19AM 6 know -- consistently erode every ruling that this
 10 24 21AM 7 Court has made, and that's just -- we've been
 10 24 23AM 8 operating under this ruling for the last I don't
 10 24 28AM 9 know how many months.

10 24 29AM 10 And now -- you know -- the state just
 10 24 33AM 11 jams in some exhibits and forces us to object, and
 10 24 37AM 12 now we have to revisit the same issue that we dealt
 10 24 39AM 13 with in our second motion in limine.

10 24 43AM 14 THE COURT: Ms. Polk.

10 24 46AM 15 MS. POLK: Your Honor, I have -- what Mr. Li
 10 24 48AM 16 just read to you is part of that same minute entry
 10 24 50AM 17 that I was reading to you. He neglected to read
 10 24 52AM 18 you the first statement under what's captioned as
 10 24 55AM 19 B, the defendant's business practices, to include
 10 24 58AM 20 sales practices and refund policy.

10 25 00AM 21 One, sales practices, what the Court
 10 25 06AM 22 wrote, is that the state has cited no legal
 10 25 09AM 23 authority to support admissibility of evidence of a
 10 25 13AM 24 person's alleged high-pressure sales techniques as
 10 25 13AM 25 evidence of recklessness in a manslaughter case.

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10 25 16AM 1 And then what Mr. Li just read, such
 10 25 19AM 2 evidence would present a high danger of suggesting
 10 25 21AM 3 to the jury that a decision may be made on an
 10 25 24AM 4 improper basis.

10 25 28AM 5 We do not intend to elicit any testimony
 10 25 29AM 6 or evidence about the high-pressure sales
 10 25 31AM 7 techniques. That's what the Court was addressing
 10 25 34AM 8 in what Mr. Li just read to you.

10 25 36AM 9 In the second paragraph the Court did
 10 25 38AM 10 note that if there is direct evidence that a
 10 25 42AM 11 specific business or sales practice actually
 10 25 45AM 12 affected an alleged victims' manner of
 10 25 48AM 13 participation in the 2009 sweat lodge, the
 10 25 51AM 14 admission of such evidence may be allowed under
 10 25 53AM 15 Rule 403. And the Court went on to note the other
 10 25 57AM 16 rules of evidence and constitutional principles
 10 26 00AM 17 also apply.

10 26 01AM 18 Then the question of whether the state of
 10 26 03AM 19 mind of alleged victims should be relevant in this
 10 26 06AM 20 matter as discussed below. And then the Court went
 10 26 08AM 21 on to say, yes. The state of mind of victims is
 10 26 11AM 22 relevant in this case.

10 26 12AM 23 There is no attempt by the state to erode
 10 26 14AM 24 any of the Court's rulings. You were addressing
 10 26 17AM 25 the high-pressure sales techniques. We are going

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10 26 20AM 1 to abide by that. We don't intend to go there.

10 26 23AM 2 But the relationship that witnesses had
 10 26 27AM 3 with Mr. Ray was formed over a period of time. And
 10 26 30AM 4 how much they paid, what events they went to, and
 10 26 34AM 5 why it is that in Spiritual Warrior 2009 as they
 10 26 38AM 6 are participating in the events of the week
 10 26 42AM 7 culminating with the sweat lodge, why is it that
 10 26 44AM 8 they trust him. And the amount of that financial
 10 26 47AM 9 investment that each of these witnesses has
 10 26 50AM 10 invested is highly relevant to this relationship
 10 26 53AM 11 with Mr. Ray and clearly should come in and is not
 10 26 57AM 12 addressed in this minute entry and not raised by
 10 27 00AM 13 the defendant, I might add.

10 27 02AM 14 THE COURT: This exhibit raises a lot more
 10 27 04AM 15 information than that. It gets into, in effect,
 10 27 08AM 16 business practices. I'm not saying one way or the
 10 27 12AM 17 other. I'm not making any comment. But that's
 10 27 17AM 18 kind of the subject of the exhibit, in just
 10 27 19AM 19 glancing through it as the attorneys are addressing
 10 27 22AM 20 the Court.

10 27 26AM 21 The -- to the extent the mental state of
 10 27 35AM 22 the alleged victims can be proved, then that's what
 10 27 41AM 23 I was addressing in that specific ruling. I
 10 27 44AM 24 discussed the Wisconsin case, I think, in that that
 10 27 47AM 25 talked about when a victim's state of mind can be

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10:27:52AM 1 relevant to -- I think that was a manslaughter
 10:27:56AM 2 charge actually.
 10:28:00AM 3 The state of mind of participants in the
 10:28:04AM 4 sweat lodge may be relevant for what they did. And
 10:28:08AM 5 if that's the case and there is foundation for
 10:28:12AM 6 evidence geared to that, that would be admissible,
 10:28:16AM 7 I would think.

10:28:20AM 8 But this exhibit in this form would not
 10:28:24AM 9 be admissible. There is way too much additional
 10:28:28AM 10 information that's irrelevant. And it's -- you
 10:28:32AM 11 know -- essentially, hearsay. Well, essentially,
 10:28:36AM 12 in some senses it would be.

10:28:40AM 13 But Mr. Li.

10:28:44AM 14 MR. LI: Your Honor -- and perhaps I misheard
 10:28:48AM 15 Ms. Polk. But I do -- I think -- and I think the
 10:28:52AM 16 record would reflect that she said to the Court
 10:28:56AM 17 that the Court would hear recordings of upselling
 10:29:00AM 18 events, which to me sounds a whole lot like
 10:29:04AM 19 business practices. And it does not actually sound
 10:29:08AM 20 like simply just what the motivations of particular
 10:29:12AM 21 participants were.

10:29:16AM 22 I think that actually is directly
 10:29:20AM 23 relevant to the Court's ruling. And I know the
 10:29:24AM 24 state is now saying that they were not going to
 10:29:28AM 25 bring up anything about the business practices.

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10:29:17AM 1 But I sure did hear the state mention the concept
 10:29:21AM 2 of upselling.

10:29:25AM 3 I think secondly -- you know -- with
 10:29:29AM 4 respect to the actual cost of other events, there
 10:29:33AM 5 is a serious 403 issue relating to this. You know,
 10:29:37AM 6 what somebody paid for an event five years earlier,
 10:29:41AM 7 three years earlier, two years earlier, is not
 10:29:45AM 8 relevant to the particular event that they're
 10:29:49AM 9 participating in in 2009. It's just simply not
 10:29:53AM 10 relevant. It's money already spent.

10:29:57AM 11 I think the state's theory is -- and I've
 10:30:01AM 12 not yet heard it articulated. But I think this is
 10:30:05AM 13 actually what the states theory is: Well, these
 10:30:09AM 14 folks paid -- you know -- many thousands of dollars
 10:30:13AM 15 to attend Spiritual Warrior 2009. And they wanted
 10:30:17AM 16 to, quote, unquote, play full on. And as a
 10:30:21AM 17 consequence, they were willing to -- you know --
 10:30:25AM 18 put themselves at risk.

10:30:29AM 19 And part of that calculus is that they
 10:30:33AM 20 paid significant amounts of money. Okay. The
 10:30:37AM 21 Court has ruled on that and said that they can get
 10:30:41AM 22 into how much money they paid and why that mattered
 10:30:45AM 23 to them. And what they paid previously for other
 10:30:49AM 24 events that they've already completed or what
 10:30:53AM 25 they're going to pay for future events is

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10:30:32AM 1 irrelevant to that calculation.

10:30:36AM 2 This is only why do people stay in a
 10:30:40AM 3 sweat lodge. It's not why do they -- you know --
 10:30:44AM 4 pay money to go do something in San Diego or do
 10:30:48AM 5 something somewhere else. So this is a very, very,
 10:30:52AM 6 very tenuous theory that the state is hanging its
 10:30:56AM 7 hat on. It has significant prejudicial
 10:31:00AM 8 possibilities.

10:31:04AM 9 THE COURT: Anything else, Ms. Polk?

10:31:08AM 10 MS. POLK: Just one final word, Your Honor,
 10:31:12AM 11 which would be that in the motion in limine by the
 10:31:16AM 12 defendant, they raised this issue of the
 10:31:20AM 13 defendant's high-pressure sales techniques only.
 10:31:24AM 14 That's what we responded to, and that's what the
 10:31:28AM 15 Court addressed.

10:31:32AM 16 Now today in court they're trying to
 10:31:36AM 17 expand their argument and the Court's ruling to all
 10:31:40AM 18 of the defendant's business practices. And many of
 10:31:44AM 19 those business practices may or may not be relevant
 10:31:48AM 20 depending on witnesses' testimony and the evidence
 10:31:52AM 21 that comes out.

10:31:56AM 22 THE COURT: Well, all we're doing now is
 10:32:00AM 23 anticipating a bench conference, essentially.

10:32:04AM 24 This exhibit would not be admissible. It
 10:32:08AM 25 just has information that gets into business

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10:31:46AM 1 practices. It would not be -- if there is an issue
 10:31:50AM 2 from a witness and the mental state of the witness
 10:31:54AM 3 that relates to finances, the amount paid, it could
 10:31:58AM 4 be relevant. I guess you have to see what question
 10:32:02AM 5 comes up.

10:32:06AM 6 MR. LI: Your Honor, just for the record,
 10:32:10AM 7 there is a similar file -- the state has marked
 10:32:14AM 8 similar files for just about every witness and I
 10:32:18AM 9 think some of the people they have listed as
 10:32:22AM 10 witnesses. And we've made the same objection to
 10:32:26AM 11 all of those.

10:32:30AM 12 THE COURT: Thank you. We should get the jury
 10:32:34AM 13 in here.

10:32:38AM 14 We need to take a recess, though. We've
 10:32:42AM 15 been at it for 90 minutes.

10:32:46AM 16 Thank you.
 10:32:50AM 17 (Recess.)

10:53:04AM 18 THE COURT: The record will show the presence
 10:53:08AM 19 of the defendant, Mr. Ray, the attorneys, and the
 10:53:12AM 20 jury.

10:53:16AM 21 Ladies and gentlemen, when we start the
 10:53:20AM 22 proceedings, I'm going to try to give as accurate a
 10:53:24AM 23 time as I can to when you need to be here. I'm
 10:53:28AM 24 trying to anticipate when legal matters have to be
 10:53:32AM 25 discussed. I think I told you yesterday

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10 53 28AM 1 9:00 o'clock, but there may be some legal matters.
 10 53 31AM 2 I did not think it was going to take this long to
 10 53 34AM 3 address -- important things. And then as I said,
 10 53 37AM 4 those are just things that happen, especially when
 10 53 40AM 5 a trial gets started.

10 53 41AM 6 So I'll just give you my promise that I
 10 53 43AM 7 will do my best to be mindful of your time and not
 10 53 47AM 8 have you here when you can't be right in court
 10 53 50AM 9 doing your job.

10 53 52AM 10 So I do need to ask something, though. I
 10 53 55AM 11 got a note from somebody that talked about
 10 53 58AM 12 inadvertent exposure to media. And I just want to
 10 54 03AM 13 ask, has anybody had -- who has had concerns, if
 10 54 08AM 14 anybody, with regard to the admonition, whether
 10 54 11AM 15 it's media or somebody possibly approaching? Has
 10 54 14AM 16 anybody else had that issue?

10 54 17AM 17 Somebody did bring a note in, though,
 10 54 19AM 18 about that. So -- okay. I'm aware of that. And I
 10 54 24AM 19 just want to say that I'm going to start off every
 10 54 27AM 20 morning with this.

10 54 28AM 21 Did that give you any kind of information
 10 54 30AM 22 you think that might affect what you're doing here
 10 54 34AM 23 and focusing only on what's presented in court.

10 54 38AM 24 JUROR: No, sir.

10 54 39AM 25 THE COURT: Okay.

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10 54 39AM 1 Anybody else have any question about
 10 54 41AM 2 that?

10 54 45AM 3 All right. As I said, that's something I
 10 54 48AM 4 will be asking in the mornings just to make sure
 10 54 49AM 5 that there aren't any problems in that regard.

10 54 50AM 6 Counsel are -- Counsel, ready to proceed?

10 54 53AM 7 MS. POLK: Yes, Your Honor.

10 54 54AM 8 MR. LI: Yes, Your Honor.

10 54 54AM 9 THE COURT: Thank you. Then the state may
 10 54 56AM 10 proceed with the state's case. I'm sorry. No, you
 10 55 00AM 11 can't.

10 55 00AM 12 This is one of the situations where
 10 55 01AM 13 Mr. Li, I had to interrupt his opening because of
 10 55 05AM 14 the time.

10 55 05AM 15 And, Mr. Li, please continue with your
 10 55 07AM 16 opening.

10 55 08AM 17 MR. LI: Thank you, Your Honor.

10 55 09AM 18 THE COURT: I'm sorry.

10 55 11AM 19 MR. LI: No worries.

10 55 19AM 20 First of all, ladies and gentlemen, I
 10 55 20AM 21 want to thank you for your patience and your
 10 55 27AM 22 attention yesterday. We always seem to get the
 10 55 31AM 23 late shift. I know it's hard to stay up and atom
 10 55 31AM 24 at the end of the day, particularly when you've
 10 55 33AM 25 been in the box for quite some time. I want to

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10 55 36AM 1 thank each and every one of you for your attention.
 10 55 38AM 2 Yesterday Ms. Polk told you what the
 10 55 42AM 3 state needed to prove beyond a reasonable doubt.
 10 55 48AM 4 And one of those things was that Mr. Ray -- the
 10 55 50AM 5 state needs to prove beyond a reasonable doubt that
 10 55 53AM 6 Mr. Ray killed the three deceased, that he caused
 10 55 57AM 7 their deaths. And that's one of the things that
 10 56 01AM 8 the state will have to prove beyond a reasonable
 10 56 04AM 9 doubt to turn this accident into a crime.

10 56 08AM 10 And we spent some time talking about it
 10 56 09AM 11 yesterday. I won't go into it all. I expect I
 10 56 11AM 12 won't be more than maybe 25 minutes. And that's
 10 56 16AM 13 one of the things the state is going to have to
 10 56 18AM 14 prove beyond a reasonable doubt. And I won't go
 10 56 19AM 15 into it all.

10 56 21AM 16 But as we go through this evidence and as
 10 56 22AM 17 you listen to the witnesses on the stand, I think
 10 56 24AM 18 it's really important that you keep in mind one of
 10 56 27AM 19 the things that I expect the Judge is going to
 10 56 28AM 20 instruct you at the end of this trial, which is
 10 56 32AM 21 that the state is going to have to prove to you
 10 56 35AM 22 beyond a reasonable doubt that a superseding,
 10 56 38AM 23 intervening event did not cause the deaths.

10 56 43AM 24 So it's not up to the defense to prove to
 10 56 48AM 25 you what happened a year and a half ago -- the

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10 56 50AM 1 defense without the resources of the state. It's
 10 56 53AM 2 up to the state to prove through their crime labs
 10 56 58AM 3 and what have you what actually caused these
 10 57 02AM 4 deaths.

10 57 04AM 5 And yesterday you heard about -- I'm not
 10 57 06AM 6 going to go through it all. This is just one.
 10 57 08AM 7 That's it. You heard about the medical evidence.
 10 57 11AM 8 You heard about the lack of an elevated
 10 57 15AM 9 temperature. And you're going to hear about the
 10 57 18AM 10 lack of significant dehydration.

10 57 25AM 11 You're also going to hear about doctors,
 10 57 29AM 12 medical records, of a person who was in a coma
 10 57 33AM 13 several days after the incident in the hospital and
 10 57 36AM 14 that doctor looking at him and saying the patient
 10 57 38AM 15 does not appear to have had heat stroke.

10 57 46AM 16 You're going to hear about the witnesses
 10 57 48AM 17 who thought it might have been the wood. You're
 10 57 51AM 18 going to hear about witnesses who talked about rat
 10 57 56AM 19 poison, perhaps other poisons, stored with the
 10 57 58AM 20 tarps.

10 58 02AM 21 You're going to hear about the owners of
 10 58 06AM 22 the Angel Valley Resort destroying the scene less
 10 58 11AM 23 than 48 hours after people -- three people died on
 10 58 15AM 24 their property and a bunch of people went to the
 10 58 20AM 25 hospital.

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10 58 20AM 1 You're going to hear about materials that
 10 58 24AM 2 the state didn't test or didn't bother to find out
 10 58 29AM 3 about the tests before they accused Mr. Ray of
 10 58 34AM 4 killing three people. You will hear about all of
 10 58 39AM 5 that. You will hear about all of that evidence.

10 58 43AM 6 And as you hear the witnesses in the next
 10 58 48AM 7 few weeks on the stand, I expect you will hear from
 10 58 49AM 8 some people who were in the sweat lodge. And I
 10 58 51AM 9 expect you will hear them talk about their
 10 58 53AM 10 experiences in the sweat lodge.

10 58 54AM 11 As they're talking and testifying about
 10 58 56AM 12 their experiences, keep in mind some of those
 10 59 01AM 13 questions. Keep in mind some of those questions
 10 59 04AM 14 about the evidence, about the things that were
 10 59 10AM 15 destroyed, about the tests that weren't done or
 10 59 15AM 16 weren't even looked at.

10 59 16AM 17 And ask yourselves, as you hear all this
 10 59 20AM 18 testimony, whether the state can prove to you all,
 10 59 23AM 19 each and every one of you, beyond a reasonable
 10 59 28AM 20 doubt that something else didn't kill three people,
 10 59 31AM 21 that it had to be Mr. Ray and his words of
 10 59 34AM 22 persuasion that killed these three folks. Keep
 10 59 40AM 23 that in mind.

10 59 42AM 24 And as you hear the testimony of these
 10 59 44AM 25 various witnesses and as they get up there and tell
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10 59 47AM 1 you about their experiences in the sweat lodge, I
 10 59 50AM 2 want you to ask yourself some questions about the
 10 59 53AM 3 state's what I call adults-can't-choose theory.

10 59 58AM 4 Keep in mind as they talk about the
 11 00 04AM 5 Samurai Game whether they really thought Mr. Ray
 11 00 08AM 6 was God when he said, I am God, or whether that was
 11 00 13AM 7 just a game where people were wearing Halloween
 11 00 20AM 8 costumes and doing egg-and-spoon races and doing
 11 00 26AM 9 throwing-star exercises with pieces of tin foil,
 11 00 28AM 10 whether these people actually thought that was some
 11 00 30AM 11 sort of religious ceremony or whether they really
 11 00 34AM 12 thought Mr. Ray was some sort of deity or whether
 11 00 38AM 13 this was just a game similar to many games that are
 11 00 40AM 14 played in many corporate context where they're
 11 00 44AM 15 trying to teach you something -- trust your
 11 00 46AM 16 co-workers, whatever it might be, trust yourself,
 11 00 48AM 17 get groups together, make up projects.

11 00 52AM 18 Ask yourselves as each of these witnesses
 11 00 56AM 19 testify whether it's really -- you know -- whether
 11 01 00AM 20 it was a religious exercise or a corporate one.

11 01 03AM 21 And then you heard a lot of tapes, which
 11 01 10AM 22 I will submit were taken out of context. But you
 11 01 15AM 23 heard a lot of tapes with -- that Ms. Polk played
 11 01 21AM 24 with Mr. Ray talking about death. You heard a lot
 11 01 21AM 25 of those tapes.

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11 01 24AM 1 Ask yourselves and ask that witness to
 11 01 27AM 2 answer, were they talking about death physically,
 11 01 35AM 3 seriously, like really dying? Or were they talking
 11 01 38AM 4 about it as a metaphor or symbol of leaving things
 11 01 42AM 5 behind.

11 01 43AM 6 I think one of the tapes Ms. Polk played
 11 01 45AM 7 actually had Mr. Ray say several times,
 11 01 50AM 8 metaphorically -- this is a great metaphor.
 11 01 53AM 9 Symbolically this is a great symbol.

11 01 58AM 10 Now, I'm not a great student of
 11 01 59AM 11 scripture. But there is a quote from Corinthians,
 11 02 04AM 12 I believe, which goes, I die daily. It's not meant
 11 02 10AM 13 to be physical. It's meant to be a recommitment
 11 02 16AM 14 every day, every single day, to your values, a
 11 02 20AM 15 recommitment to your faith. That's what's meant in
 11 02 24AM 16 Corinthians.

11 02 24AM 17 Now, ask yourselves whether when Mr. Ray
 11 02 28AM 18 is talking about death -- and if you just listen to
 11 02 33AM 19 some tapes taken out of context, is he talking
 11 02 36AM 20 about I want you all to die? You actually need to
 11 02 40AM 21 die? Or is he talking about it, as he says on that
 11 02 44AM 22 tape, in a metaphorical sense, sort of symbolic
 11 02 49AM 23 sense, get rid of the past. Let it go.

11 02 57AM 24 Ask yourselves. As you see these
 11 02 58AM 25 witnesses on the stand, ask them, were they adults?
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11 03 04AM 1 Are each and every one of these folks sitting up
 11 03 10AM 2 there taking an oath -- are they an adult? Did
 11 03 13AM 3 they sign a waiver in which the various activities
 11 03 17AM 4 were described, and then they said I choose -- if I
 11 03 21AM 5 do choose to participate in any of the activities,
 11 03 24AM 6 I affirm that I have not been not will I be coerced
 11 03 31AM 7 or persuaded in any way to do so. And I assume
 11 03 35AM 8 full responsibility for the risks of any injuries
 11 03 38AM 9 sustained in connection with the activities, like
 11 03 41AM 10 the sweat lodge, like the Vision Quest, whether
 11 03 45AM 11 caused by the negligence of the releasees or
 11 03 49AM 12 others.

11 03 49AM 13 There is another waiver that you're going
 11 03 50AM 14 to see that they all signed in which they said hey,
 11 03 55AM 15 you know what. I'm in good health.

11 04 00AM 16 Ask yourselves, as they are describing
 11 04 03AM 17 what happened, whether they were forced to do
 11 04 06AM 18 anything. Make the state answer that question.
 11 04 12AM 19 Were they forced? Ask yourselves and ask each
 11 04 19AM 20 witness, are they able, as each of you are -- are
 11 04 24AM 21 they able, like you, to think for themselves like
 11 04 28AM 22 every other American in this country.

11 04 32AM 23 And see if any of those witnesses is
 11 04 36AM 24 going to say I was an adult. I didn't sign any of
 11 04 39AM 25 these waivers. I was forced. And, frankly, I am

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11 04 45AM 1 unable to think for myself. I'm a cult follower.
 11 04 50AM 2 See if any of these witnesses say that.
 11 04 57AM 3 Now, that has to do with whether or not
 11 05 00AM 4 Mr. Ray caused people to die, killed three people.
 11 05 08AM 5 The state also has to prove another
 11 05 11AM 6 element, as I told you. They have to prove this
 11 05 14AM 7 one also beyond a reasonable doubt. And that's
 11 05 19AM 8 that Mr. Ray was aware of. That means he knew and
 11 05 25AM 9 consciously disregarded the fact that people were
 11 05 32AM 10 dying or that they had a substantial, unjustifiable
 11 05 36AM 11 risk of death, that he knew that folks were dying.
 11 05 38AM 12 That's one of the things the state's
 11 05 41AM 13 going to have to prove. I'm going to submit to you
 11 05 44AM 14 they cannot do this.
 11 05 47AM 15 Let me explain to you a little bit about
 11 05 50AM 16 the sweat lodge. Okay? The sweat lodge, as I've
 11 05 55AM 17 said, is this big, old tent like this. In the
 11 06 00AM 18 center there is a pit. They fill that up with
 11 06 00AM 19 rocks.
 11 06 00AM 20 And, you know, Ms. Polk made a big deal
 11 06 04AM 21 about the 55 rocks at the end of the day. The
 11 06 07AM 22 reality is there is no rocks in the beginning. And
 11 06 10AM 23 I don't know how many square feet this is and how
 11 06 13AM 24 much cubic feet it takes to heat that kind of a
 11 06 16AM 25 volume. I suspect quite a few rocks. And I will
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11 06 18AM 1 suggest to you this is not like Mr. Ripley's tent
 11 06 24AM 2 that he did back in the day when he was camping
 11 06 27AM 3 with his buddies. This is a big tent.
 11 06 30AM 4 And what happens is the folks come in and
 11 06 33AM 5 they sit down. And they sit in two rows mostly.
 11 06 38AM 6 Some people can sit in the back row. And they're
 11 06 40AM 7 encouraged to help each other and say, hey, listen,
 11 06 43AM 8 if you want to sit in the back row, sit in the back
 11 06 45AM 9 row. If you want to sit in the front, sit in the
 11 06 48AM 10 front row.
 11 06 48AM 11 Then what happens is the rocks are
 11 06 51AM 12 heated, and water gets thrown on it, and it gets
 11 06 54AM 13 hot. It gets real hot just like it says in the
 11 06 57AM 14 waiver. It gets real hot, extreme temperatures.
 11 07 01AM 15 When the flap gets opened like over here,
 11 07 05AM 16 light comes in and some air, like you heard Mr. Ray
 11 07 08AM 17 say in the tape. And when it gets closed, it gets
 11 07 11AM 18 dark, real dark. And there is some light from the
 11 07 14AM 19 pit here, the glowing rocks. But it's dark.
 11 07 18AM 20 And you're going to hear evidence that
 11 07 20AM 21 the reason why people are supposed to leave in an
 11 07 28AM 22 orderly fashion -- you know -- clockwise is so that
 11 07 32AM 23 they avoid the pit and all the arms and legs and
 11 07 34AM 24 all the people.
 11 07 34AM 25 And we hear a lot about in the news about
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11 07 38AM 1 people getting crushed to death and hurting
 11 07 39AM 2 themselves in stampedes. That happens
 11 07 42AM 3 unfortunately too much.
 11 07 45AM 4 And so here's what happens. Here's what
 11 07 47AM 5 Mr. Ray's program is: Basically, it's this: And
 11 07 51AM 6 again, this might not be your cup of tea. People
 11 07 58AM 7 go in. Hey, look. I want to do -- I commit to a
 11 08 01AM 8 particular goal. I want to be a better dad. I
 11 08 05AM 9 want to be with my wife. I want to -- you know --
 11 08 07AM 10 listen to her better. I want a better
 11 08 09AM 11 relationship. Okay? I want to be in better shape.
 11 08 14AM 12 I've not been doing that. That's my -- and I'm
 11 08 16AM 13 going to be dedicated. And from this point on
 11 08 21AM 14 through the rest of my life, that's what I'm going
 11 08 23AM 15 to dedicate myself to.
 11 08 25AM 16 Everybody gets to choose their own goal.
 11 08 27AM 17 It can be whatever you want. To have a better
 11 08 30AM 18 softball game or golf game or whatever. It's up to
 11 08 34AM 19 you to choose.
 11 08 35AM 20 And then you get up there and you commit
 11 08 37AM 21 to it. That's the whole purpose of this seminar
 11 08 39AM 22 from day one. So at the end of the five-day
 11 08 42AM 23 ceremony -- or seminar, you go into the sweat
 11 08 44AM 24 lodge. And now you're supposed to get rid of all
 11 08 47AM 25 the things that are holding you back, all of the
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11 08 50AM 1 reasons why, all excuses that I have for why I
 11 08 53AM 2 didn't call my wife yesterday. Okay?
 11 08 55AM 3 You know. I was too busy. Get rid of
 11 08 58AM 4 those excuses. Just deal with it. Face it. You
 11 09 01AM 5 didn't do it because you just didn't do it. Face
 11 09 04AM 6 it. Deal with it. Okay? Throw it away. Move on.
 11 09 08AM 7 Commit. All right?
 11 09 10AM 8 So at the end of the ceremony or seminar,
 11 09 13AM 9 everybody is supposed to go into the sweat lodge
 11 09 15AM 10 and supposed to say hey, look. Here are all the
 11 09 19AM 11 things holding me back -- my excuses, all the thing
 11 09 21AM 12 in my life that I'm just -- you know -- the reasons
 11 09 24AM 13 why I'm not achieving what I'm supposed to achieve.
 11 09 28AM 14 Then what happens is in the sweat lodge
 11 09 30AM 15 the round starts. Mr. Ray will say something
 11 09 33AM 16 like -- you know -- almost like a benediction.
 11 09 35AM 17 Okay, everybody. I call out to the positive
 11 09 38AM 18 energies in this world, and I ask them to help
 11 09 44AM 19 everybody here to commit deeply to all the things
 11 09 47AM 20 they want to do in their lives.
 11 09 49AM 21 People will say I hear you. What are you
 11 09 51AM 22 going to be do? I'm going to be a better dad. I'm
 11 09 51AM 23 going to be a better husband. I'm going to be a
 11 09 55AM 24 better wife. I'm going to be a better all these
 11 09 57AM 25 things.

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11:09:57AM 1 They all sort of holler this out. Are
 11:09:59AM 2 you committed to that? Yes, we are. We are
 11:10:01AM 3 absolutely committed to that.
 11:10:03AM 4 You don't sound like you mean it. Are
 11:10:05AM 5 you really committed to that?
 11:10:07AM 6 Yes. I am committed to that.
 11:10:09AM 7 That's what's happening in the ceremony.
 11:10:11AM 8 Okay? Just getting people to just get out there
 11:10:13AM 9 and say I'm committed to it. I'm going to do it.
 11:10:15AM 10 So it's loud. There is a lot of people saying
 11:10:17AM 11 everything.
 11:10:19AM 12 And Mr. Ray is talking a lot and -- you
 11:10:21AM 13 know -- sort of really -- you know -- giving a lot
 11:10:23AM 14 of himself into this.
 11:10:25AM 15 And this will go on in the early rounds
 11:10:27AM 16 for maybe 15 minutes, 20 minutes. And in the later
 11:10:29AM 17 rounds short, 10 minutes. Okay? So they're going
 11:10:31AM 18 around.
 11:10:33AM 19 And then at the end of the round, the
 11:10:35AM 20 flap goes up. People who want to leave, leave.
 11:10:37AM 21 Okay? Remember about 20-some-odd people left.
 11:10:39AM 22 Some people came back in. You remember the person
 11:10:41AM 23 who burned his arm, who Ms. Polk described as
 11:10:43AM 24 having chunks of flesh coming off his arm? I'm not
 11:10:45AM 25 going to minimize what happens to somebody if they
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11:11:09AM 1 touch hot rocks. I have -- I'm sure you have
 11:11:12AM 2 too -- touched the side of an oven. It hurts. And
 11:11:14AM 3 you get burned really bad.
 11:11:16AM 4 And -- you know -- this gentleman did get
 11:11:18AM 5 burned. But you will find out that they were what
 11:11:20AM 6 are known as second degree burns, which is not
 11:11:22AM 7 third degree burns. And, again, I'm not minimizing
 11:11:24AM 8 this. We need to -- you will hear what the
 11:11:26AM 9 evidence is. You will hear that. And, again, I'm
 11:11:28AM 10 not minimizing it. It is a burn and it hurts like
 11:11:30AM 11 heck.
 11:11:32AM 12 This guy went outside, got some first aid
 11:11:34AM 13 and came back in. Okay? He went out and he came
 11:11:36AM 14 back in.
 11:11:38AM 15 And the point of this exercise, as the
 11:11:40AM 16 point is of many of these exercises, is that you
 11:11:42AM 17 can overcome. Try really, really hard. You
 11:11:44AM 18 actually can overcome. You know what. If you
 11:11:46AM 19 can't, if you can't. If you got to leave, leave.
 11:11:48AM 20 It's okay. But try. Try hard.
 11:11:50AM 21 So here's a couple things the state
 11:11:52AM 22 didn't tell you about: These are safety
 11:11:54AM 23 precautions, things that were put in place for this
 11:11:56AM 24 sweat lodge ceremony that I will submit to you you
 11:11:58AM 25 will hear no evidence from the state that there is
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11:12:38AM 1 any other sweat lodge anywhere that does this.
 11:12:43AM 2 Okay?
 11:12:43AM 3 They had -- well, first of all, folks
 11:12:47AM 4 were told to drink water constantly. Hydrate,
 11:12:51AM 5 hydrate, hydrate. Drink water. Keep drinking
 11:12:54AM 6 water. Keep drinking water. And it's all over the
 11:12:57AM 7 tapes. You know, every one of these witnesses is
 11:13:01AM 8 going to get told or going to tell you that they
 11:13:04AM 9 were told over and over again hydrate, hydrate,
 11:13:07AM 10 hydrate. Keep water. It's in the desert.
 11:13:13AM 11 Mr. Ray's company paid for employees to
 11:13:15AM 12 get CPR training. So they had CPR-trained folks
 11:13:21AM 13 there. They had a volunteer there. And I'm not
 11:13:24AM 14 saying she was chosen for this purpose or anything.
 11:13:26AM 15 But they did have a volunteer there who was a
 11:13:28AM 16 nurse.
 11:13:32AM 17 They had volunteers on the outside of the
 11:13:35AM 18 tent -- these various people -- who were supposed
 11:13:38AM 19 to monitor the situation. And they had volunteers
 11:13:49AM 20 in the inside who were supposed to monitor the
 11:13:53AM 21 situation, like a buddy system.
 11:13:56AM 22 And I want you to read. This is what the
 11:13:58AM 23 volunteers who are on the inside -- this is what
 11:14:00AM 24 their duties were. You will assist participants as
 11:14:03AM 25 they enter and exit the sweat lodge.
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11:14:06AM 1 Remember -- you folks need to understand
 11:14:08AM 2 something. This sweat lodge is probably about, I'm
 11:14:10AM 3 going to guess, about this tall -- maybe this tall
 11:14:12AM 4 in the middle. But around the door area, it's
 11:14:16AM 5 around this tall. So the only way you can get in
 11:14:18AM 6 and out is by sort of crab walking, crawling. You
 11:14:24AM 7 know, it's low.
 11:14:26AM 8 And so folks are supposed to help people
 11:14:28AM 9 in and out. Remember, there is a fire pit in
 11:14:32AM 10 there. Help people in and out.
 11:14:34AM 11 If you are inside the sweat lodge, you
 11:14:36AM 12 must remain alert and ready to help the entire
 11:14:42AM 13 time. That means if you're one of the volunteers
 11:14:46AM 14 on the inside, you need to stay alert. If you feel
 11:14:50AM 15 bad -- you know -- you need to let folks know. You
 11:14:56AM 16 got to take care of yourself on this one because
 11:14:59AM 17 you're supposed to be helping folks.
 11:15:01AM 18 And be present and ready to quickly and
 11:15:04AM 19 immediately -- I'm sorry. If you are on the
 11:15:07AM 20 outside of the sweat lodge, be present and ready to
 11:15:10AM 21 quickly do what is necessary to assist anyone
 11:15:13AM 22 coming out of the sweat lodge. This goes to the
 11:15:15AM 23 whole thing of crawling out.
 11:15:17AM 24 I'm -- you're going to -- one of the
 11:15:19AM 25 things is this: If you're hot and you're dizzy and
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11 15 22AM 1 all of this, or even if you're not, and you've sort
 11 15 26AM 2 of been down in this position for a long time and
 11 15 28AM 3 you stand up, you have a very high chance of
 11 15 30AM 4 fainting, of literally just falling over because
 11 15 32AM 5 the blood is not going to get to your head.

11 15 38AM 6 So folks on the outside are encouraging
 11 15 40AM 7 people to stay down, stay down, stay down, and move
 11 15 41AM 8 them over to the tarps where they can be sprayed
 11 15 45AM 9 with hoses and cooled off. Okay?

11 15 47AM 10 So that's how this whole ceremony is
 11 15 50AM 11 supposed to work. This is how folks are supposed
 11 15 52AM 12 to take care of each other.

11 15 54AM 13 And most importantly, there are Mr. Ray's
 11 15 58AM 14 own instructions. I'm not going to play them all
 11 16 01AM 15 for you again. You heard them yesterday. You are
 11 16 03AM 16 going to hear them again in this trial. One of
 11 16 05AM 17 them was hey. Stay low to the ground. If you're
 11 16 08AM 18 in the sweat lodge and it's hot, and you're not --
 11 16 13AM 19 you don't feel good, get down to the earth. Get
 11 16 17AM 20 real close to the earth. Put your face right into
 11 16 20AM 21 the earth so you can cool the air into your mouth,
 11 16 23AM 22 into your nose. And also heat rises, so stay low.

11 16 28AM 23 And then the part that the state's
 11 16 37AM 24 adult-can't-think-for-themselves or
 11 16 40AM 25 can't-choose-for-themselves theory sort of ignores

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11 16 42AM 1 is Mr. Ray says, if you have to leave, then you
 11 16 45AM 2 need to. When the gates are opened, if you have to
 11 16 50AM 3 leave, you leave in a very, very controlled manner,
 11 16 54AM 4 very carefully. Because there is legs, and it's
 11 16 57AM 5 dark, and there is legs and knees, et cetera.
 11 17 00AM 6 Leave controlled.

11 17 07AM 7 And this is a really short tape. And
 11 17 09AM 8 you're going to have to excuse -- there is a little
 11 17 12AM 9 bit of profanity that I have put little asterisk
 11 17 17AM 10 marks. I think you will figure it out.

11 17 20AM 11 (Audio played.)

11 17 37AM 12 MR. LI: Now, the point is at the end of this,
 11 17 39AM 13 people want out. They're done. They've been
 11 17 42AM 14 sitting in this hot place for hours. They want
 11 17 45AM 15 out. Okay?

11 17 46AM 16 And Mr. Ray is telling his -- the
 11 17 51AM 17 participants, slow down. Get out safe. Don't
 11 17 58AM 18 stampede. Don't hurt each other. Don't stampede.
 11 18 01AM 19 Think about that when you hear all of the testimony
 11 18 05AM 20 that Ms. Polk is going to introduce relating to
 11 18 08AM 21 what happened at the end of the sweat lodge
 11 18 09AM 22 ceremony. Think about that.

11 18 12AM 23 Whether it's some guy saying oh, I don't
 11 18 18AM 24 care people are dying, or whether it's somebody who
 11 18 24AM 25 is saying there is a way to do this. Don't

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11 18 27AM 1 stampede. And whether maybe some folks
 11 18 31AM 2 misinterpreted it and didn't understand what was
 11 18 33AM 3 really happening.

11 18 36AM 4 The point is JRI, Mr. Ray's company, took
 11 18 40AM 5 a bunch of precautions. I'm going to tell you, I
 11 18 42AM 6 will suggest to you, that the government is not
 11 18 45AM 7 going to be able to put on a witness who is going
 11 18 47AM 8 to say oh, yeah. In all sweat lodges this is
 11 18 50AM 9 what --

11 18 51AM 10 I forgot something. They also have
 11 18 53AM 11 outside, like, a recovery station like at a
 11 18 55AM 12 marathon, under a tent with a bunch of
 11 18 58AM 13 electrolytes, Gatorade and water and fruit, all of
 11 19 03AM 14 these things, sitting outside.

11 19 05AM 15 So when you come out -- if you want to
 11 19 07AM 16 come out in the middle of the round, drink some
 11 19 10AM 17 Gatorade, get yourself cooled off, people spray you
 11 19 12AM 18 off and if you want to go back in, go back in.
 11 19 15AM 19 Cool yourself down.

11 19 17AM 20 So I'm going to ask you to see if the
 11 19 18AM 21 state puts on a witness who says oh, yeah. That's
 11 19 21AM 22 the kind of stuff that all sweat lodges do.
 11 19 24AM 23 Because it isn't.

11 19 28AM 24 I'm going to submit to you, everyone,
 11 19 29AM 25 Mr. Ray included, thought this was going to be
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11 19 32AM 1 tough, like a marathon, like a tough event. But
 11 19 37AM 2 nobody, nobody at all, thought anyone was going to
 11 19 42AM 3 die.

11 19 43AM 4 And, in fact, the evidence is going to
 11 19 46AM 5 show that, in fact, people did not know that anyone
 11 19 48AM 6 was going to die. Nobody knew. Nobody in the
 11 19 51AM 7 sweat lodge, nobody out of the sweat lodge.

11 19 53AM 8 And how do we know this? It's not
 11 19 55AM 9 because I'm up here talking at you. As the Judge
 11 19 58AM 10 has instructed you and will instruct you, neither
 11 20 02AM 11 what Ms. Polk says or what I say is evidence.
 11 20 05AM 12 We're just telling you what we think the evidence
 11 20 07AM 13 is going to show.

11 20 08AM 14 You will hear from witness. They're
 11 20 09AM 15 going to tell you all the things that I'm about to
 11 20 13AM 16 describe.

11 20 13AM 17 Liz Neuman. This is one of the
 11 20 15AM 18 decedents. She was seated next to two women --
 11 20 20AM 19 Laura Tucker and Laurie Gennari. Ms. Tucker
 11 20 23AM 20 towards the end of the ceremony thought that there
 11 20 25AM 21 was something wrong with the way Ms. Neuman was
 11 20 28AM 22 sitting. The -- it bothered her. So she asked
 11 20 33AM 23 her, are you okay?

11 20 37AM 24 Ms. Neuman said, yes.

11 20 41AM 25 Ms. Tucker asked, do you want to get out?
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11:20:45AM 1 Ms. Neuman said, no. No hesitation. No
 11:20:50AM 2 delay. No wavering.
 11:20:56AM 3 How is somebody supposed to know that
 11:21:01AM 4 somebody who tells you I'm okay is not okay? How
 11:21:06AM 5 are you supposed to know that? How can you know
 11:21:11AM 6 that?
 11:21:16AM 7 Mr. Shore, another one of the decedents.
 11:21:21AM 8 Toward the end of the ceremony somebody needed help
 11:21:26AM 9 out. Mr. Shore took her and helped her around
 11:21:31AM 10 underneath -- not underneath but in the sweat
 11:21:36AM 11 lodge. Helped her move over towards the door, as
 11:21:41AM 12 you're supposed to, help each other. This is
 11:21:46AM 13 almost at the very end of the ceremony. Round 7,
 11:21:51AM 14 round 8.
 11:21:56AM 15 How is anybody supposed to know that a
 11:22:01AM 16 guy who is doing this, who is helping somebody out
 11:22:06AM 17 and then going back to his spot -- he could have
 11:22:11AM 18 just kept going. How is anybody supposed to know
 11:22:16AM 19 that that person is about to die? Nobody did.
 11:22:21AM 20 Kirby Brown, another one of the
 11:22:26AM 21 decedents. You're going to hear that towards the
 11:22:31AM 22 end of the ceremony she was encouraging everybody.
 11:22:36AM 23 We can do this. We can do this. We can do this.
 11:22:41AM 24 So much so that some of the participants were
 11:22:46AM 25 saying pipe down a little. You know? One of them
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11:22:51AM 1 might have even said you're kind of disturbing
 11:22:56AM 2 everybody. If you keep this going on, you might
 11:23:01AM 3 need to get out.
 11:23:06AM 4 How are we -- how could -- nobody knew
 11:23:11AM 5 that somebody who is saying we can do this, we can
 11:23:16AM 6 do this, we can do this, was actually dying.
 11:23:21AM 7 And this is a little point I want to make
 11:23:26AM 8 that I forgot to make yesterday. Ms. Polk is
 11:23:31AM 9 saying that simply encouraging people -- we can do
 11:23:36AM 10 this, you can do this, you can do this -- that's
 11:23:41AM 11 what overcomes everybody's will and that's what
 11:23:46AM 12 makes Mr. Ray a criminal and that's what makes this
 11:23:51AM 13 whole thing, this accident, a crime.
 11:23:56AM 14 What about all the 500-some-odd people
 11:24:01AM 15 inside the sweat lodge who were all telling each
 11:24:06AM 16 other we can do this, we can do this, we can do
 11:24:11AM 17 this? It's an accident.
 11:24:16AM 18 You're going to hear from one witness
 11:24:21AM 19 that the state -- who is a doctor by the name of
 11:24:26AM 20 Jeanne Armstrong. Dr. Armstrong is a medical
 11:24:31AM 21 doctor. And she practices in what's known as
 11:24:36AM 22 immediate care. Immediate care is one step below
 11:24:41AM 23 emergency room.
 11:24:46AM 24 So this is a person who deals with people
 11:24:51AM 25 who have real serious medical problems. She knows
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11:23:43AM 1 when somebody needs to go to the ER. Okay? She's
 11:23:48AM 2 trained. She did the whole ceremony, all eight
 11:23:53AM 3 rounds. And she was lucid throughout the whole
 11:23:58AM 4 ceremony. And she's going to tell you -- you
 11:24:03AM 5 know -- a lot of things that I described to you
 11:24:08AM 6 earlier.
 11:24:13AM 7 She's going to say that -- this going
 11:24:18AM 8 back to the Samurai Game. She's going to say that
 11:24:23AM 9 that was stupid. It was like the boys seemed to
 11:24:28AM 10 like it more than the girls did. It seemed like it
 11:24:33AM 11 was some kind of -- I forget. Dungeons and Dragons
 11:24:38AM 12 sort of -- you know -- like role-playing games.
 11:24:43AM 13 And she's a real down-to-earth person.
 11:24:48AM 14 You will meet her. And she's going to say that she
 11:24:53AM 15 heard the whole -- she was there the whole time.
 11:24:58AM 16 And she did not know -- a doctor. And she did not
 11:25:03AM 17 know that anybody was dying.
 11:25:08AM 18 And what happens afterwards? The moment
 11:25:13AM 19 she gets out and she realizes oh, my God. People
 11:25:18AM 20 are dying, what does she do? She does what a
 11:25:23AM 21 doctor does. She springs into action. She takes
 11:25:28AM 22 control of the situation like a doctor would.
 11:25:33AM 23 Starts making sure people are doing CPR, making
 11:25:38AM 24 sure all the things that are supposed to be done
 11:25:43AM 25 are done until the emergency folks arrive.
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11:25:05AM 1 This is a person who was in the sweat
 11:25:08AM 2 lodge the whole time who didn't realize anything --
 11:25:13AM 3 anyone was dying.
 11:25:16AM 4 Now, as you listen to all of the
 11:25:21AM 5 testimony that comes from all of these witnesses, I
 11:25:24AM 6 want you to keep a few things in mind. And I want
 11:25:28AM 7 you to keep a few of these questions in mind. What
 11:25:31AM 8 would you do? What would you do if you knew right
 11:25:35AM 9 now that the person next to you was dying?
 11:25:38AM 10 What would you do, or you, if you knew
 11:25:42AM 11 right now that somebody across the room was dying?
 11:25:45AM 12 What would any of us do if we knew somebody in this
 11:25:49AM 13 room was dying?
 11:25:52AM 14 We'd say, Judge, we need to stop this
 11:25:56AM 15 proceeding immediately. We need to get this person
 11:26:00AM 16 help. We need to call 911. We need to do
 11:26:04AM 17 something. This person is dying. We need to take
 11:26:08AM 18 care of them now.
 11:26:11AM 19 That didn't happen during the sweat lodge
 11:26:15AM 20 ceremony. It didn't happen. Now, is the reason it
 11:26:19AM 21 didn't happen because everybody, everybody in there
 11:26:23AM 22 who was sitting next to people who died -- they're
 11:26:27AM 23 all criminals or they're all reckless and they
 11:26:31AM 24 didn't care and they didn't think about anybody,
 11:26:35AM 25 that they thought they were recklessly
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11:26:38AM 1 disregarding -- consciously and recklessly
 11:26:41AM 2 disregarding a risk that somebody was going to die?
 11:26:45AM 3 Does it mean they're all criminals? No.
 11:26:49AM 4 It's an accident. What it means, ladies
 11:26:53AM 5 and gentlemen, and what you will see is that they
 11:26:57AM 6 did not know. They did not know. And Mr. Ray did
 11:27:01AM 7 not know.
 11:27:05AM 8 Sometimes an accident is just an
 11:27:09AM 9 accident. Not every tragedy is a crime. And when
 11:27:13AM 10 we started this case together, you took an oath.
 11:27:17AM 11 And that oath was to make the state prove to you
 11:27:21AM 12 beyond a reasonable doubt that Mr. Ray killed three
 11:27:25AM 13 people, to make the government show you beyond a
 11:27:29AM 14 reasonable doubt that he is a criminal because he
 11:27:33AM 15 encouraged people because he said you can do this.
 11:27:37AM 16 As you listen to the evidence the state
 11:27:41AM 17 puts on, these witnesses that are going to come in
 11:27:45AM 18 here, ask yourselves as you hear these witnesses,
 11:27:49AM 19 are the witnesses you hear from adults? Can they
 11:27:53AM 20 choose for themselves? In this country are people
 11:27:57AM 21 free to choose for themselves? Of course they are.
 11:28:01AM 22 Ask yourself this: Has the state proven
 11:28:05AM 23 to you that elevated temperature, lack of elevated
 11:28:09AM 24 temperature, lack of dehydration, people talking
 11:28:13AM 25 about toxins -- have they proven to you that you

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11:28:18AM 1 should ignore all of that?
 11:28:22AM 2 Ask yourselves why did the Angel Valley
 11:28:26AM 3 folks destroy that whole scene less than 48 hours
 11:28:30AM 4 after three people died?
 11:28:34AM 5 And ask yourselves what would each and
 11:28:38AM 6 every one of you do if you knew right now that the
 11:28:42AM 7 person next to you was dying? What would you do
 11:28:46AM 8 right now?
 11:28:50AM 9 This was an accident, not a crime.
 11:28:54AM 10 Mr. Ray is not guilty of any crime. This was a
 11:28:58AM 11 tragic, tragic accident.
 11:29:02AM 12 Thank you.
 11:29:06AM 13 THE COURT: Thank you, Mr. Li.
 11:29:10AM 14 MR. LI: Thank you, Your Honor.
 11:29:14AM 15 THE COURT: Ms. Polk, you may call your first
 11:29:18AM 16 witness.
 11:29:22AM 17 MS. POLK: Your Honor, the state calls
 11:29:26AM 18 Ms. Phillips.
 11:29:30AM 19 THE COURT: Ma'am, please step to the front of
 11:29:34AM 20 the courtroom where the bailiff is directing you.
 11:29:38AM 21 And then raise your right hand to be
 11:29:42AM 22 sworn by the clerk.
 11:29:46AM 23 MELISSA PHILLIPS,
 11:29:50AM 24 having been first duly sworn upon her oath to tell
 11:29:54AM 25 the truth, the whole truth, and nothing but the

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11:30:17AM 1 truth, testified as follows:
 11:30:21AM 2 THE COURT: Please be seated here to my right.
 11:30:25AM 3 Please begin by stating and spelling your
 11:30:29AM 4 full name.
 11:30:33AM 5 THE WITNESS: Melissa Phillips, M-e-l-l-i-s-s-a,
 11:30:37AM 6 P-h-i-l-l-i-p-s.
 11:30:41AM 7 THE COURT: Thank you.
 11:30:45AM 8 Ms. Polk?
 11:30:49AM 9 MS. POLK: Thank you, Your Honor.
 11:30:53AM 10 DIRECT EXAMINATION
 11:30:57AM 11 BY MS. POLK:
 11:31:01AM 12 Q. Good morning, Ms. Phillips.
 11:31:05AM 13 A. Good morning.
 11:31:09AM 14 Q. Could you tell the jury where you live.
 11:31:13AM 15 A. Toronto, Ontario.
 11:31:17AM 16 Q. Are you a Canadian citizen?
 11:31:21AM 17 A. Yes, I am.
 11:31:25AM 18 Q. Would you mind telling the jury how old
 11:31:29AM 19 you are.
 11:31:33AM 20 A. 43.
 11:31:37AM 21 Q. Are you employed?
 11:31:41AM 22 A. No, I'm not.
 11:31:45AM 23 Q. Do you know a man named James Ray?
 11:31:49AM 24 A. Yes, I do.
 11:31:53AM 25 Q. Could you tell the jury how you came to
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11:31:37AM 1 meet James Ray.
 11:31:41AM 2 A. I saw him on the -- in The Secret. And
 11:31:45AM 3 my cousin attended a free seminar in Toronto, and
 11:31:49AM 4 we signed up for Harmonic Wealth in 2007.
 11:31:53AM 5 Q. Where was Harmonic Wealth? First of all,
 11:31:57AM 6 where was it held?
 11:32:01AM 7 A. We went to the one in Henderson, in
 11:32:05AM 8 Vegas. And it was at the Ritz-Carlton.
 11:32:09AM 9 Q. You went with your cousin?
 11:32:13AM 10 A. Yes, I did.
 11:32:17AM 11 Q. How long was that seminar?
 11:32:21AM 12 A. I believe it's a two-day seminar. Two or
 11:32:25AM 13 three days.
 11:32:29AM 14 Q. Was that the first time you saw James Ray
 11:32:33AM 15 in person?
 11:32:37AM 16 A. Yes, it was.
 11:32:41AM 17 Q. After attending that seminar, did you
 11:32:45AM 18 sign up for additional events with Mr. Ray?
 11:32:49AM 19 A. Yes, I did.
 11:32:53AM 20 Q. What events were those?
 11:32:57AM 21 A. I went to Creating Absolute Wealth,
 11:33:01AM 22 Practical Mysticism, Modern Magic, Quantum Leap.
 11:33:05AM 23 And I attended the Modern Magic twice and Quantum
 11:33:09AM 24 Leap twice. And then I signed up for Spiritual
 11:33:13AM 25 Warrior.

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11:32:37AM 1 Q. Can you just tell the jury generally
 11:32:39AM 2 where these different events were held.
 11:32:40AM 3 A. San Diego; Hawaii; Dana Point,
 11:32:41AM 4 California. The other one was in Lake Tahoe and in
 11:32:42AM 5 Vegas.
 11:32:55AM 6 Q. Over what period of time did you attend
 11:32:57AM 7 those various seminars that you just listed for the
 11:33:00AM 8 jury?
 11:33:01AM 9 A. Over two years.
 11:33:02AM 10 Q. When was it that you signed up to attend
 11:33:04AM 11 the Spiritual Warrior seminar?
 11:33:06AM 12 A. I had signed up, I believe, a year
 11:33:08AM 13 previous to the actual event.
 11:33:14AM 14 Q. And the Spiritual Warrior event that you
 11:33:16AM 15 signed up for was the event held in October
 11:33:18AM 16 of 2009?
 11:33:19AM 17 A. Yes, it was.
 11:33:20AM 18 Q. Do you recall how much you paid for that
 11:33:24AM 19 particular seminar offered by Mr. Ray?
 11:33:25AM 20 A. It was approximately 10,000 Canadian.
 11:33:29AM 21 Q. Why did you sign up to attend the
 11:33:32AM 22 Spiritual Warrior 2009 seminar?
 11:33:34AM 23 A. I had decided that I had not gone to a
 11:33:36AM 24 University. I wanted to have experiences,
 11:33:43AM 25 enlightenment. And I found these seminars great

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11:33:49AM 1 fun. I grew and learned. And we were promised
 11:33:55AM 2 that it would be a life-altering experience.
 11:33:58AM 3 Q. Who promised you that Spiritual
 11:34:01AM 4 Warrior 2009 would be a life-altering experience?
 11:34:05AM 5 A. We were told by James Ray in the seminars
 11:34:08AM 6 and by Dream People, the Dream Team, and the people
 11:34:13AM 7 who had attended previous Spiritual Warrior
 11:34:16AM 8 courses.
 11:34:17AM 9 Q. Before you actually arrived in Yavapai
 11:34:21AM 10 County in October of 2009, had you been told by
 11:34:24AM 11 Mr. Ray that the Spiritual Warrior 2009 would be an
 11:34:29AM 12 altering experience, a life-altering experience?
 11:34:35AM 13 A. Yes.
 11:34:33AM 14 Q. What were your expectations,
 11:34:37AM 15 Ms. Phillips, of the Spiritual Warrior 2009
 11:34:41AM 16 seminar?
 11:34:42AM 17 A. Well, I had overheard my friends talking
 11:34:47AM 18 and speaking about the experience. And I knew what
 11:34:52AM 19 to expect in general terms. And I was expecting to
 11:34:58AM 20 walk away more confident. I was expecting to walk
 11:35:02AM 21 away with a great learning experience. And I was
 11:35:13AM 22 expecting that it would be a wonderful experience
 11:35:17AM 23 for myself.
 11:35:19AM 24 Q. You told the jury that you paid about
 11:35:19AM 25 10,000 Canadian dollars to Mr. Ray to attend the

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11:35:24AM 1 Spiritual Warrior 2009 seminar. Did you pay
 11:35:27AM 2 additional fees for room and board?
 11:35:31AM 3 A. Yes, we did.
 11:35:32AM 4 Q. Who did you make those payment to?
 11:35:33AM 5 A. To Angel Valley.
 11:35:35AM 6 Q. What did you pay?
 11:35:36AM 7 A. I believe it was \$267 a night. It was
 11:35:42AM 8 either 16- or \$1,800 dollars extra. And I paid it
 11:35:47AM 9 by VISA.
 11:35:48AM 10 Q. When was it that you had paid Mr. Ray the
 11:35:52AM 11 10,000 Canadian dollars to attend Spiritual
 11:35:56AM 12 Warrior?
 11:35:56AM 13 A. I cannot recollect exactly when.
 11:35:58AM 14 Q. Was it before arriving?
 11:36:01AM 15 A. Well before arriving.
 11:36:03AM 16 Q. And did you use a credit card for that as
 11:36:05AM 17 well?
 11:36:05AM 18 A. Yes, I did.
 11:36:07AM 19 Q. Did you know anybody else who was
 11:36:09AM 20 attending the Spiritual Warrior 2009 seminar?
 11:36:12AM 21 A. Yes, I did.
 11:36:13AM 22 Q. How many other people did you know who
 11:36:15AM 23 were attending?
 11:36:16AM 24 A. I knew Lou and I knew Mark Rock. And I
 11:36:23AM 25 was pleasantly surprised that Jennifer Haley was

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11:36:27AM 1 there upon arriving.
 11:36:29AM 2 Q. How did you know Lou?
 11:36:30AM 3 A. From previous events. And he's a fellow
 11:36:35AM 4 Canadian. So we would have coffee or lunches. And
 11:36:40AM 5 we became friends.
 11:36:41AM 6 Q. And how did you know Mark Rock?
 11:36:42AM 7 A. He was in the previous training in Vegas
 11:36:51AM 8 where we were in groups. And he was in my group.
 11:36:55AM 9 And him and his wife had attended Spiritual Warrior
 11:36:59AM 10 the year before.
 11:37:00AM 11 Q. How did you know Jennifer Haley?
 11:37:02AM 12 A. I had met her in Hawaii at Modern Magic
 11:37:06AM 13 and then subsequently on other events.
 11:37:13AM 14 Q. Prior to arriving in the Sedona area to
 11:37:18AM 15 attend the Spiritual Warrior seminar in
 11:37:22AM 16 October 2009, did you receive information from
 11:37:24AM 17 Mr. Ray?
 11:37:25AM 18 A. We received a participant guide.
 11:37:28AM 19 Q. Do you know when you received that
 11:37:30AM 20 participant guide?
 11:37:32AM 21 A. I believe it was about a month prior to.
 11:37:39AM 22 MS. POLK: And, Your Honor, may I approach the
 11:37:40AM 23 witness?
 11:37:40AM 24 THE COURT: Yes, you may.
 11:37:48AM 25 Q. BY MS. POLK: Ms. Phillips, will you take

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11:37:50AM 1 a moment to look at that, please.

11:37:55AM 2 MR. KELLY: Judge, if that's Exhibit 199, I

11:37:58AM 3 would stipulate to its admission.

11:38:01AM 4 MS. POLK: Your Honor, the state does move to

11:38:04AM 5 admit it, then.

11:38:07AM 6 THE COURT: That's Exhibit 199. And it is

11:38:09AM 7 admitted.

11:38:11AM 8 (Exhibit 199 admitted.)

11:38:11AM 9 MS. POLK: Thank you.

11:38:12AM 10 Q. BY MS. POLK: Ms. Phillips, do you

11:38:14AM 11 recognize what we're calling Exhibit 199?

11:38:17AM 12 A. This would be a photocopy of my

11:38:20AM 13 participant guide.

11:38:21AM 14 Q. And that you -- you're telling the jury

11:38:23AM 15 you received it about a month prior to coming out

11:38:25AM 16 here to Arizona to attend the seminar?

11:38:28AM 17 A. We were all emailed the participant

11:38:31AM 18 guides. And yes. It was well before the appointed

11:38:34AM 19 time because we had time to buy the things to

11:38:42AM 20 register at Angel Valley.

11:38:48AM 21 Q. You said it was emailed to you. Did you

11:38:51AM 22 print it out?

11:38:51AM 23 A. I did.

11:38:52AM 24 Q. And there is some handwriting that

11:38:54AM 25 appears on page 1 of this participant guide. Do

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11:38:57AM 1 you know whose handwriting that is?

11:38:58AM 2 A. That's my handwriting.

11:39:03AM 3 Q. Let me ask you to look at page 2 of the

11:39:05AM 4 participant guide.

11:39:13AM 5 A. Is page 2 the first page after --

11:39:17AM 6 Q. Yes. Do you recall reading page 2 of

11:39:20AM 7 this guide?

11:39:21AM 8 A. Yes.

11:39:22AM 9 Q. And this appears to be a letter to you.

11:39:26AM 10 Is that what you understood it to be?

11:39:28AM 11 A. It was a letter to all of us attending.

11:39:32AM 12 Q. And it's dated July 2nd, 2009.

11:39:38AM 13 Ms. Phillips, would that be consistent, do you

11:39:40AM 14 believe, when you received it or not?

11:39:42AM 15 A. I cannot recall.

11:39:45AM 16 Q. It's possible that you did not receive it

11:39:47AM 17 on July 2nd of 2009?

11:39:48AM 18 A. It's possible I received it. But it's

11:39:54AM 19 also possible that I printed it up later. I'm not

11:39:58AM 20 clear of when I received it. I didn't make a note.

11:40:11AM 21 Q. The letter starts out, dear warrior. Is

11:40:15AM 22 "Warrior" you?

11:40:15AM 23 A. Yes.

11:40:15AM 24 Q. Can I have you look at the third

11:40:19AM 25 paragraph of this letter. And I'm going to read it

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11:40:24AM 1 to you. It says, keep in mind that we will be

11:40:27AM 2 working diligently to make this event memorable.

11:40:33AM 3 For this reason it is important that we do not

11:40:36AM 4 disclose any information regarding the events

11:40:40AM 5 schedule or planned activity.

11:40:42AM 6 Do you recall reading that?

11:40:43AM 7 A. Yes, I do.

11:40:45AM 8 Q. And do you recall what your reaction to

11:40:48AM 9 that was?

11:40:47AM 10 A. Well, I wasn't so worried because I had

11:40:52AM 11 eavesdropped on friends talking about it. And I

11:40:55AM 12 kind of did that for each event because I'm a

11:40:58AM 13 little bit nervous about attending things I don't

11:41:02AM 14 know. So I sort of knew and I didn't pay attention

11:41:06AM 15 to that paragraph then.

11:41:08AM 16 Q. Had you talked to other friends who had

11:41:11AM 17 attended the Spiritual Warrior seminar on prior

11:41:19AM 18 occasions?

11:41:19AM 19 A. Yes.

11:41:19AM 20 Q. And in that way you had gotten some idea

11:41:22AM 21 of the events that were to come?

11:41:24AM 22 A. They didn't discuss things openly when

11:41:27AM 23 they found out I hadn't gone. But I was at a

11:41:30AM 24 dinner and people were talking right next to me, so

11:41:32AM 25 I didn't say anything, and I heard quite a bit.

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11:41:37AM 1 Q. And specifically, what events that you

11:41:41AM 2 then did participate in 2009 at the Spiritual

11:41:46AM 3 Warrior -- which of those event did you know ahead

11:41:47AM 4 of time were coming?

11:41:49AM 5 A. All of them.

11:41:50AM 6 Q. And list all of them for me. Would you.

11:41:52AM 7 A. We had the hair shaving, the opportunity

11:41:55AM 8 to let go of vanity and to --

11:42:01AM 9 Q. Let me interrupt you. I will ask you

11:42:03AM 10 more about the hair shaving. So just -- if you can

11:42:05AM 11 list by activity, just give me the names of those

11:42:07AM 12 events that you actually knew.

11:42:08AM 13 A. The holotropic breathing, the Vision

11:42:13AM 14 Quest, and the sweat lodge.

11:42:15AM 15 Q. Was it your belief that you were not

11:42:17AM 16 supposed to know about these events before

11:42:19AM 17 arriving?

11:42:19AM 18 A. Yes.

11:42:20AM 19 Q. Where did you get that opinion or belief

11:42:23AM 20 from?

11:42:23AM 21 A. They tell you when -- in the seminars

11:42:31AM 22 when they talk about Spiritual Warrior, they refer

11:42:34AM 23 that it's life altering and it's a lot of work, but

11:42:38AM 24 they don't tell you what it will be because you're

11:42:42AM 25 supposed to show up not as prepared in order to

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11 42 48AM 1 have your breakthroughs. And that's my
 11 42 51AM 2 understanding.
 11 42 52AM 3 Q. You're supposed to show up not prepared
 11 43 01AM 4 in order to have a breakthrough. And who told you
 11 43 03AM 5 that?
 11 43 07AM 6 A. Well, we were told that we would not be
 11 43 18AM 7 told what's happening by James himself. Even when
 11 43 20AM 8 he would talk about Spiritual Warrior, he would
 11 43 24AM 9 only say that it's only so many people will go
 11 43 28AM 10 there and you won't come out the same person that
 11 43 33AM 11 you came in as. And most of the seminars you don't
 11 43 40AM 12 know what's going to happen until you're there.
 11 43 43AM 13 Q. Can you give the jury a time frame for
 11 43 48AM 14 when it was James Ray told you and others that you
 11 43 51AM 15 come to Spiritual Warrior without being prepared
 11 43 53AM 16 for what was to come your way.
 11 43 58AM 17 A. Well, you're told before you sign up.
 11 44 02AM 18 Q. And the venue or the time when you were
 11 44 04AM 19 told -- that would have been at a different seminar
 11 44 05AM 20 that were you attending?
 11 44 06AM 21 A. Yes.
 11 44 08AM 22 Q. Let me have you flip to page -- it's
 11 44 27AM 23 actually the eighth page of Exhibit 199.
 11 44 38AM 24 Do you see the paragraph that talks about
 11 44 40AM 25 event release forms?

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11 44 42AM 1 A. Yes.
 11 44 43AM 2 Q. And that paragraph states, we have
 11 44 45AM 3 provided a sample copy of the Spiritual Warrior
 11 44 48AM 4 release waiver of liability, et cetera.
 11 44 53AM 5 Do you see that?
 11 44 53AM 6 A. Yes.
 11 44 54AM 7 Q. And then the next line says, whether or
 11 44 56AM 8 not you plan to participate in any particular
 11 44 59AM 9 exercise, you will be required to submit both of
 11 45 03AM 10 these forms in order to gain admittance to the
 11 45 06AM 11 event.
 11 45 06AM 12 Do you recall reading --
 11 45 07AM 13 A. Yes.
 11 45 09AM 14 Q. When you arrived at Spiritual Warrior,
 11 45 11AM 15 were you asked to sign some waivers?
 11 45 13AM 16 A. Yes.
 11 45 14AM 17 Q. Tell the jury when it was that you were
 11 45 18AM 18 presented with waivers to sign.
 11 45 20AM 19 A. Immediately upon arrival we conducted our
 11 45 23AM 20 paperwork. We were welcomed, given a backpack and
 11 45 28AM 21 sent to our cabin.
 11 45 34AM 22 Q. Who was it that gave you waivers or
 11 45 35AM 23 paperwork to sign?
 11 45 38AM 24 A. My friend Jennifer was there and Mark was
 11 45 38AM 25 there. The Dream Team was there to welcome us.

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11 45 41AM 1 And I was provided a clipboard to fill out and sign.
 11 45 48AM 2 Q. And, Ms. Phillips, this participant guide
 11 45 48AM 3 that came out to you sometime before October
 11 45 52AM 4 of 2009 actually had samples of those waivers?
 11 45 57AM 5 A. Yes, it did.
 11 45 58AM 6 Q. But you didn't fill them out then?
 11 46 02AM 7 A. No, I did not.
 11 46 03AM 8 Q. You didn't fill them out until you
 11 46 05AM 9 arrived?
 11 46 05AM 10 A. Correct.
 11 46 06AM 11 Q. Could you tell the jury whether or not
 11 46 10AM 12 that is what other participants did as well.
 11 46 14AM 13 MR. KELLY: Objection, Your Honor.
 11 46 15AM 14 Speculative.
 11 46 18AM 15 THE COURT: Sustained on foundation.
 11 46 20AM 16 Q. BY MS. POLK: Where was the area that you
 11 46 22AM 17 were signing the paperwork upon your arrival?
 11 46 24AM 18 A. The white tent.
 11 46 26AM 19 Q. Did all the participants -- upon arrival
 11 46 28AM 20 were you directed to the white tent?
 11 46 31AM 21 A. Upon arrival we were directed to enter
 11 46 34AM 22 the tent.
 11 46 34AM 23 Q. That was your first stop upon arrival?
 11 46 37AM 24 A. Yes.
 11 46 37AM 25 Q. That applied to everybody who was
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11 46 39AM 1 arriving as a participant?
 11 46 41AM 2 A. To my understanding, yes.
 11 46 42AM 3 Q. And if you can just describe for the
 11 46 44AM 4 jury, in the white tent what was the arrangement,
 11 46 47AM 5 then, to do the paperwork? Were there tables?
 11 46 50AM 6 stations?
 11 46 51AM 7 A. Chairs and tables were set up. And we
 11 46 55AM 8 had the Dream Team members welcoming, lots of hugs,
 11 47 03AM 9 high fives, lots of excitement, and the forms with
 11 47 06AM 10 clipboards on the tables.
 11 47 10AM 11 Q. So you were given a clipboard and you
 11 47 12AM 12 filled out some paperwork?
 11 47 13AM 13 A. I did.
 11 47 23AM 14 Q. I'm going to hand you Exhibits 201 and
 11 47 30AM 15 202. If you will take a moment to take a look at
 11 47 41AM 16 those exhibits.
 11 47 54AM 17 Do you recognize both of those exhibits?
 11 47 56AM 18 A. I do.
 11 47 57AM 19 Q. And 201 is titled "Spiritual Warrior"?
 11 48 04AM 20 MR. KELLY: Excuse me. May I see the exhibits
 11 48 06AM 21 before they're presented to the witness?
 11 48 07AM 22 THE COURT: Yes.
 11 48 17AM 23 MR. KELLY: Your Honor, I would stipulate to
 11 48 20AM 24 the admission of both 201 and 202.
 11 48 26AM 25 MS. POLK: The state would move for the
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11 48 27AM 1 admission of the exhibits.

11 48 29AM 2 THE COURT: 201 and 202 are admitted.

11 48 29AM 3 (Exhibits 201 and 202 admitted.)

11 48 31AM 4 Q. BY MS. POLK: Let me have you take a look

11 48 31AM 5 at Exhibit 201. And that's the Spiritual Warrior

11 48 44AM 6 Release Waiver of Liability?

11 48 45AM 7 A. Yes.

11 48 49AM 8 Q. And I'm placing that on the overhead,

11 48 04AM 9 Ms. Phillips.

11 49 12AM 10 Is that your signature on the left side

11 49 14AM 11 of that document?

11 49 14AM 12 A. It is.

11 49 15AM 13 Q. What's the date that you signed it?

11 49 18AM 14 A. October 3rd, '09.

11 49 20AM 15 Q. Did you read this waiver at that time?

11 49 23AM 16 A. I did.

11 49 23AM 17 Q. And had you read it before arriving?

11 49 25AM 18 A. I had.

11 49 26AM 19 Q. And who's the person who witnessed your

11 49 30AM 20 signature that day?

11 49 30AM 21 A. That's Jennifer Haley.

11 49 33AM 22 Q. She witnessed as you signed it?

11 49 36AM 23 A. Yes, she did.

11 49 37AM 24 Q. When you signed or when you went through

11 49 52AM 25 the registration process, was any medical

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11 49 54AM 1 information taken about yourself by Mr. Ray or his

11 49 58AM 2 staff or helpers?

11 49 58AM 3 A. No, it was not.

11 50 00AM 4 Q. So when you signed this waiver that

11 50 05AM 5 talked about the events of the week and you waiving

11 50 08AM 6 liability --

11 50 11AM 7 A. Yes.

11 50 11AM 8 Q. -- no information about you and your

11 50 14AM 9 physical condition was taken?

11 50 16AM 10 MR. KELLY: Your Honor, that's been asked and

11 50 18AM 11 answered.

11 50 18AM 12 THE COURT: Overruled.

11 50 21AM 13 Q. BY MS. POLK: Was your answer no?

11 50 24AM 14 A. No.

11 50 24AM 15 Q. Do you have any medical or physical

11 50 27AM 16 issues, if you wouldn't mind my asking?

11 50 29AM 17 A. The doctor has put me on thyroid

11 50 32AM 18 medication. And I need to watch my weight and

11 50 38AM 19 blood sugar. He terms it "prediabetic."

11 50 43AM 20 Q. Did Mr. Ray ever require from you a

11 50 49AM 21 physical, a physical by a doctor prior to you

11 50 55AM 22 attending the Spintual Warrior seminar?

11 50 55AM 23 A. No.

11 50 57AM 24 Q. Was emergency medical information taken

11 51 01AM 25 from you?

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11 51 01AM 1 A. I don't recall.

11 51 06AM 2 Q. What other paperwork was done when you

11 51 09AM 3 went through this registration process on site?

11 51 13AM 4 A. To the best of my recollection, just the

11 51 16AM 5 liability and the Angel Valley waiver were the only

11 51 21AM 6 paperwork that we did.

11 51 24AM 7 Q. And so no physical was required?

11 51 27AM 8 A. No.

11 51 28AM 9 Q. And no one took any emergency medical or

11 51 32AM 10 emergency contact information from you?

11 51 34AM 11 MR. KELLY: Objection, Your Honor. Asked and

11 51 36AM 12 answered for the third time.

11 51 37AM 13 THE COURT: Sustained. It's leading.

11 51 43AM 14 Q. BY MS. POLK: Was there anybody there

11 51 48AM 15 that -- did anybody ask you about your physical

11 51 51AM 16 condition or any medical issues you might have at

11 51 54AM 17 the time you were signing this waiver?

11 51 56AM 18 A. No.

11 51 57AM 19 Q. Now, Ms. Phillips, you have told the jury

11 52 05AM 20 that you actually had a sneak preview of the events

11 52 11AM 21 that were to come?

11 52 12AM 22 A. Yes.

11 52 12AM 23 Q. And you also knew that there was going to

11 52 14AM 24 be a sweat lodge ceremony?

11 52 15AM 25 A. Yes.

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11 52 16AM 1 Q. At the time you signed this waiver, you

11 52 17AM 2 knew that there was going to be a sweat lodge

11 52 18AM 3 ceremony?

11 52 20AM 4 A. Yes.

11 52 20AM 5 Q. Had anybody told you details about the

11 52 23AM 6 sweat lodge ceremony?

11 52 25AM 7 A. I had overheard how it's conducted.

11 52 28AM 8 Q. Had anybody told you how long the sweat

11 52 33AM 9 lodge ceremony would be conducted by Mr. Ray, for

11 52 37AM 10 what period of time?

11 52 37AM 11 A. No.

11 52 38AM 12 Q. And had Mr. Ray or anybody told you about

11 52 41AM 13 how hot the ceremony would be?

11 52 44AM 14 A. Before we entered the sweat lodge, we

11 52 46AM 15 were told it would be very hot.

11 52 48AM 16 Q. And at the time that you signed this

11 52 50AM 17 waiver, were you told that it would be very hot?

11 52 52AM 18 A. No.

11 52 53AM 19 Q. Looking back at Exhibit 199, that you

11 53 14AM 20 still have in front of you, the handwritten notes

11 53 16AM 21 that appear on the front reflect what?

11 53 18AM 22 A. I made the note of the time for my flight

11 53 25AM 23 and when we had to be at Angel Valley and when the

11 53 28AM 24 sedan would pick me up to go to the Ritz in Phoenix

11 53 33AM 25 and when I would be going home.

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11 53 37AM 1 Q. And tell the jury, then, what day did you
 11 53 40AM 2 arrive in Phoenix?
 11 53 41AM 3 A. **October 10th, I believe.**
 11 53 42AM 4 Q. Let me ask a better question. At the
 11 53 43AM 5 beginning of the seminar when you were just coming
 11 53 44AM 6 there --
 11 53 45AM 7 A. **I flew into LAX and met my friend Suze,**
 11 53 46AM 8 **and we drove to Sedona together.**
 11 53 47AM 9 Q. When did you arrive in Sedona?
 11 53 48AM 10 A. **We arrived (sic) the day before and stayed**
 11 53 49AM 11 **at the Super 8 Motel.**
 11 53 50AM 12 Q. Did Suze attend the Spiritual Warrior
 11 53 51AM 13 seminar?
 11 53 52AM 14 A. **No, she did not.**
 11 53 53AM 15 Q. When was registration at Angel Valley for
 11 53 54AM 16 the Spiritual Warrior seminar?
 11 53 55AM 17 A. **It was on the Saturday.**
 11 53 56AM 18 Q. Do you recall the date?
 11 53 57AM 19 A. **I believe it was the 3rd of October when**
 11 53 58AM 20 **we signed the release -- the waivers.**
 11 53 59AM 21 Q. After arriving in the area, arriving at
 11 54 00AM 22 the Angel Valley Retreat Center, during the
 11 54 01AM 23 registration process what did you do next?
 11 54 02AM 24 A. **I was directed to my cabin where I**
 11 54 03AM 25 **unpacked and got settled in.**

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11 54 52AM 1 Q. Will you describe for the jury the cabin.
 11 54 53AM 2 A. **I shared a cabin with three other ladies.**
 11 54 54AM 3 **There were four beds. And you walked upstairs,**
 11 54 55AM 4 **entered the room with four beds. The washrooms**
 11 54 56AM 5 **were up the road.**
 11 54 57AM 6 Q. After getting situated in your cabin,
 11 54 58AM 7 what did you do?
 11 54 59AM 8 A. **I went for a walk and visited with the**
 11 55 00AM 9 **other warriors who were arriving.**
 11 55 01AM 10 Q. And why did you just use that term
 11 55 02AM 11 "warrior"?
 11 55 03AM 12 A. **At the events we called ourselves**
 11 55 04AM 13 **"warriors." We were on a spiritual journey.**
 11 55 05AM 14 Q. At events other than Spiritual Warrior,
 11 55 06AM 15 you called yourselves "warriors"?
 11 55 07AM 16 A. **Yes.**
 11 55 08AM 17 Q. And talked about being on a spiritual
 11 55 09AM 18 journey?
 11 55 10AM 19 A. **Yes.**
 11 55 11AM 20 Q. Did you get dinner that night?
 11 55 12AM 21 A. **Yes, we did.**
 11 55 13AM 22 Q. Do you recall approximately what time was
 11 55 14AM 23 dinner?
 11 55 15AM 24 A. **It was after 6:00 p.m.**
 11 55 16AM 25 Q. Did anything -- were there any gatherings

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11 56 01AM 1 before dinner.
 11 56 02AM 2 A. **No other official gatherings.**
 11 56 03AM 3 Q. Was there a welcome at dinner?
 11 56 04AM 4 A. **We were told to meet at a certain time.**
 11 56 05AM 5 **And we were welcomed. And then I believe we had**
 11 56 06AM 6 **our shaving ceremony and then dinner. I'm not**
 11 56 07AM 7 **clear now of when we had dinner. I believe we had**
 11 56 08AM 8 **dinner afterwards.**
 11 56 09AM 9 Q. Let's talk about the head shaving
 11 56 10AM 10 ceremony. Who was it that first spoke to you and
 11 56 11AM 11 the participants about shaving your head?
 11 56 12AM 12 A. **Well, James came in and gave a wonderful,**
 11 56 13AM 13 **enthusiastic talk.**
 11 56 14AM 14 Q. When you say "James," do you mean
 11 56 15AM 15 Mr. Ray, the defendant in this case?
 11 56 16AM 16 A. **Yes, I do.**
 11 56 17AM 17 Q. He came in and gave you a talk. Do you
 11 56 18AM 18 recall what room you were in at Angel Valley?
 11 56 19AM 19 A. **It was in the area where we could dine.**
 11 56 20AM 20 **There was a dining lodge in an area just outside.**
 11 56 21AM 21 Q. Did Mr. Ray talk to you about shaving
 11 56 22AM 22 your head in that talk?
 11 56 23AM 23 A. **He did.**
 11 56 24AM 24 Q. Do you recall what he said?
 11 56 25AM 25 A. **He gave us the opportunity to let go of**
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11 57 26AM 1 **something. I knew about the hair shaving, and I**
 11 57 27AM 2 **felt I should play full on and do everything in my**
 11 57 28AM 3 **power to have the experience I was paying for.**
 11 57 29AM 4 Q. You just used the term "play full on."
 11 57 30AM 5 A. **Yes, I did.**
 11 57 31AM 6 Q. Who did you learn that term from?
 11 57 32AM 7 A. **From the seminars and from Mr. Ray.**
 11 57 33AM 8 Q. What did Mr. Ray tell you that means, to
 11 57 34AM 9 play full on?
 11 57 35AM 10 A. **To play full on is to give it your**
 11 57 36AM 11 **everything. Don't hold back.**
 11 57 37AM 12 Q. Did you -- did he -- your testimony is
 11 57 38AM 13 you decided to shave your head?
 11 57 39AM 14 A. **Yes.**
 11 57 40AM 15 Q. Where did you go to have your head
 11 57 41AM 16 shaved?
 11 57 42AM 17 A. **We went up the hill. They had three**
 11 57 43AM 18 **chairs set up.**
 11 57 44AM 19 Q. And who did the head shaving?
 11 57 45AM 20 A. **Barb had a pair of clippers, Jennifer had**
 11 57 46AM 21 **a pair of clippers, and another lady had a pair of**
 11 57 47AM 22 **clippers.**
 11 57 48AM 23 Q. How long was your hair before you had
 11 57 49AM 24 your head shaved?
 11 57 50AM 25 A. **Approximately ear length.**
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11:58:42AM 1 Q. Was that a hard decision for you to have
 11:58:46AM 2 your head shaved?
 11:58:47AM 3 A. I had known about it beforehand and
 11:58:48AM 4 thought I wouldn't. And then in the moment I
 11:58:49AM 5 thought, well, it's hair. It grows. Why not?
 11:58:58AM 6 Q. Do you know, Ms. Phillips, how many of
 11:59:01AM 7 the participants at Spiritual Warrior 2009 had
 11:59:04AM 8 their heads shaved?
 11:59:06AM 9 A. Quite a few. I don't know the
 11:59:09AM 10 percentage.
 11:59:12AM 11 Q. Was there -- when you had your head
 11:59:17AM 12 shaved, were other participants there watching?
 11:59:18AM 13 A. We were cheering each other on.
 11:59:22AM 14 Q. About how many of the participants were
 11:59:24AM 15 there to cheer on those that were having their head
 11:59:27AM 16 shaved?
 11:59:27AM 17 A. Everyone was present.
 11:59:29AM 18 Q. Was there pressure to have your head
 11:59:31AM 19 shaved?
 11:59:33AM 20 A. I'm not sure "pressure" is the right
 11:59:41AM 21 word.
 11:59:42AM 22 Q. What would be the right word?
 11:59:47AM 23 A. Inspiration. There was a lot of
 11:59:52AM 24 motivation. We were motivated to go ahead and do
 11:59:58AM 25 that.

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12:00:00PM 1 Q. Was the head shaving symbolic of
 12:00:03PM 2 something?
 12:00:04PM 3 A. I believe it was symbolic of letting go.
 12:00:11PM 4 Q. And letting go of what?
 12:00:13PM 5 A. Of attachment, of your appearance,
 12:00:20PM 6 vanity.
 12:00:20PM 7 Q. And what was your understanding of why
 12:00:22PM 8 letting go of your appearance had something to do
 12:00:27PM 9 with spiritual enlightenment?
 12:00:33PM 10 A. It was my understanding that by letting
 12:00:38PM 11 go of how we look and letting go of something that
 12:00:44PM 12 we deem important, we would gain a better
 12:00:48PM 13 understanding spiritually and find out what's more
 12:00:53PM 14 important in life.
 12:00:55PM 15 Q. Was that discussed by Mr. Ray when he
 12:00:59PM 16 talked to you about the head shaving event?
 12:01:04PM 17 A. It was alluded to.
 12:01:10PM 18 MS. POLK: Your Honor, I note that it's noon.
 12:01:13PM 19 Would you like me to stop here?
 12:01:14PM 20 THE COURT: Yes. Thank you. I want to remind
 12:01:17PM 21 Ms. Phillips, the rule of exclusion of witnesses
 12:01:21PM 22 has been invoked.
 12:01:21PM 23 I think you've been over that. That
 12:01:23PM 24 means you cannot talk or communicate -- talk to or
 12:01:28PM 25 communicate with any other witness about the case

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12:01:30PM 1 until it's over. You can't communicate about your
 12:01:34PM 2 testimony or anything else about the case at all
 12:01:38PM 3 with other witnesses.
 12:01:37PM 4 You can, however, talk to the attorneys
 12:01:41PM 5 as long as no other witness is present.
 12:01:43PM 6 Do you understand?
 12:01:44PM 7 THE WITNESS: Yes. Thank you.
 12:01:45PM 8 THE COURT: Thank you. I'll just excuse
 12:01:48PM 9 everyone right now.
 12:01:48PM 10 Just keep your seat a minute,
 12:01:54PM 11 Ms. Phillips.
 12:01:54PM 12 Ladies and gentlemen, we will take the
 12:01:55PM 13 noon recess.
 12:01:58PM 14 Please remember the admonition. Don't
 12:01:58PM 15 talk to anyone about the case. Don't let anyone
 12:02:00PM 16 talk to you about it. Keep an open mind about the
 12:02:00PM 17 case.
 12:02:01PM 18 Please return, be assembled, at 1:30 p.m.
 12:02:04PM 19 We are in recess. Thank you.
 01:35:07PM 20 (Recess.)
 01:35:07PM 21 THE COURT: The record will show the presence
 01:35:09PM 22 of the defendant, Mr. Ray, the attorneys, the jury.
 01:35:13PM 23 And the witness is back on the witness stand.
 01:35:15PM 24 And, of course, Ms. Phillips, you are
 01:35:17PM 25 still under oath. You understand?

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01:35:20PM 1 THE WITNESS: Thank you. Yes.
 01:35:20PM 2 THE COURT: Ms. Polk?
 01:35:25PM 3 MS. POLK: Thank you, Your Honor.
 01:35:32PM 4 Q. BY MS. POLK: Ms. Phillips, I put back up
 01:35:34PM 5 on the overhead exhibit -- I believe it's 202.
 01:35:41PM 6 Yes. This is the waiver that you have testified
 01:35:45PM 7 that you read and signed.
 01:35:46PM 8 I want to direct your attention to that
 01:35:49PM 9 second paragraph with the information about the
 01:35:53PM 10 sweat lodge. And I'm going to read the second
 01:36:03PM 11 sentence that says, these activities may include
 01:36:07PM 12 physical exercise, e.g., hiking, swimming, yoga,
 01:36:14PM 13 team games, holotropic breathwork; a
 01:36:18PM 14 psychotherapeutic approach believed to allow access
 01:36:21PM 15 to nonordinary states of consciousness; a sweat
 01:36:23PM 16 lodge ceremony; a ceremonial sauna involving tight,
 01:36:28PM 17 enclosed spaces, and intense temperatures.
 01:36:32PM 18 It was your testimony that you read this
 01:36:35PM 19 waiver including that paragraph before you signed
 01:36:39PM 20 the waiver?
 01:36:40PM 21 A. Yes.
 01:36:41PM 22 Q. Will you tell us, Ms. Phillips, what your
 01:36:44PM 23 expectations of the sweat lodge ceremony were at
 01:36:47PM 24 the time you signed this waiver.
 01:36:50PM 25 A. I understood it was like a rebirthing. I

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01:36:54PM 1 **understood it was a spiritual journey. And I**
 01:36:59PM 2 **understood that many people have done it and come**
 01:37:02PM 3 **out feeling more profound. And I was hoping for a**
 01:37:05PM 4 **similar experience.**

01:37:08PM 5 **Q.** What were your expectations about the
 01:37:11PM 6 conditions inside the sweat lodge?

01:37:13PM 7 **A.** **I expected that it was going to be dark**
 01:37:18PM 8 **and hot.**

01:37:17PM 9 **Q.** Would you have participated in Mr. Ray's
 01:37:23PM 10 sweat lodge ceremony if you thought there was a
 01:37:28PM 11 possibility people would die?

01:37:29PM 12 **A.** **No.**

01:37:29PM 13 **Q.** Did you believe it was going to be
 01:37:31PM 14 dangerous?

01:37:31PM 15 **A.** **No.**

01:37:38PM 16 **Q.** You talked about arriving on Saturday,
 01:37:44PM 17 shaving your head, having dinner. What happened
 01:37:47PM 18 the rest of Saturday evening in terms of the
 01:37:49PM 19 seminar?

01:37:51PM 20 **A.** **It was free time and then we were able to**
 01:37:53PM 21 **go to our beds and get a good sleep.**

01:38:02PM 22 **Q.** And then the next day was Sunday,
 01:38:04PM 23 October 4th?

01:38:05PM 24 **A.** **Yes.**

01:38:06PM 25 **Q.** What time did you wake up, or what time
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01:38:09PM 1 was everyone encouraged to get up?

01:38:12PM 2 **A.** **I don't recall for certain. I know that**
 01:38:13PM 3 **we had yoga in the morning. And I decided to**
 01:38:20PM 4 **participate and so set the alarm to get up to go to**
 01:38:24PM 5 **yoga and then breakfast.**

01:38:25PM 6 **Q.** What time was yoga?

01:38:27PM 7 **A.** **I'm not certain. I think 6:00 or 6:30.**
 01:38:30PM 8 **I'm not certain. It could have been 7:15.**

01:38:37PM 9 THE COURT: Ms. Polk, while you're putting
 01:38:40PM 10 that exhibit up and showing it to Mr. Kelly --
 01:38:42PM 11 Ms. Rybar, would you come up. I want to
 01:38:50PM 12 get the realtime operating again.

01:38:59PM 13 MR. KELLY: Judge, we'll stipulate to 137.

01:39:04PM 14 THE COURT: Okay. Exhibit 137 is admitted.
 01:39:08PM 15 (Exhibit 137 admitted.)

01:39:08PM 16 **Q.** BY MS. POLK: Ms. Phillips, I'm going to
 01:39:10PM 17 put Exhibit 137 up on the overhead.

01:39:22PM 18 Would you take a moment to look at the
 01:39:24PM 19 schedule. First of all, do you recognize it from
 01:39:27PM 20 the Spiritual Warrior participant guide that you
 01:39:29PM 21 already testified to?

01:39:31PM 22 **A.** **Yes.**

01:39:34PM 23 **Q.** This exhibit shows a daily schedule. It
 01:39:34PM 24 talks about Saturday?

01:39:35PM 25 **A.** **Yes.**

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01:39:36PM 1 **Q.** And then the second part of it is a
 01:39:38PM 2 schedule from Sunday, October 4, to Thursday,
 01:39:42PM 3 October 8. And I see that the -- although the
 01:39:47PM 4 first part actually says 2009, the second section
 01:39:51PM 5 here is talking about 2008.

01:39:53PM 6 **A.** **Yes.**

01:39:53PM 7 **Q.** Do you recall if that's what was actually
 01:39:58PM 8 in your participant guide, that change in dates?

01:39:58PM 9 **A.** **I don't believe I noticed that there was**
 01:40:01PM 10 **an error.**

01:40:04PM 11 **Q.** Looking, though, at the schedule for
 01:40:06PM 12 Sunday, October 4, through Thursday, with breakfast
 01:40:10PM 13 starting around 7:00, group gatherings at 8:00,
 01:40:14PM 14 lunch at 1:00, group gatherings at 2:00, dinner at
 01:40:18PM 15 6:30, group gathering at approximately 8:00, and
 01:40:23PM 16 then the date, ending at 11:00, does that
 01:40:28PM 17 accurately reflect what the schedule or the events
 01:40:30PM 18 of the week were?

01:40:32PM 19 **A.** **It was a guideline. We started on time.**
 01:40:38PM 20 **Sometimes breaks would be later. All of the events**
 01:40:42PM 21 **tend to go long. And we were well aware of this.**

01:40:46PM 22 **Q.** Were they long days?

01:40:47PM 23 **A.** **Yes.**

01:40:48PM 24 **Q.** Did you participate in yoga every
 01:40:51PM 25 morning?

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01:40:51PM 1 **A.** **I did.**

01:40:51PM 2 **Q.** Approximately how many participants were
 01:40:53PM 3 up doing yoga by 6:30 a.m.?

01:40:57PM 4 **A.** **The tent was full.**

01:41:00PM 5 **Q.** You talked about the tent. Was that a
 01:41:03PM 6 venue location?

01:41:04PM 7 **A.** **It was an area where we met for yoga and**
 01:41:08PM 8 **where we did the holotropic breathing and had some**
 01:41:13PM 9 **other gatherings.**

01:41:15PM 10 **Q.** Did the days typically end at 11:00 p.m.?

01:41:18PM 11 **A.** **The official days? Yes.**

01:41:22PM 12 **Q.** And what do you mean by asking me the
 01:41:25PM 13 official day?

01:41:28PM 14 **A.** **We had exercises where we were to**
 01:41:29PM 15 **recapitulate or journal, and we were encouraged to**
 01:41:32PM 16 **stay up and write.**

01:41:34PM 17 **Q.** Who encouraged you to stay up and write?

01:41:38PM 18 **A.** **James Ray.**

01:41:37PM 19 **Q.** First let me have you explain to the jury
 01:41:40PM 20 that term you just used -- "recapitulate."

01:41:44PM 21 Is that a term used by Mr. Ray?

01:41:46PM 22 **A.** **It is.**

01:41:47PM 23 **Q.** What does that term mean to you?

01:41:49PM 24 **A.** **As it was explained and I understood it,**
 01:41:53PM 25 **it was journaling and just writing anything that**

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01 41 58PM **1** came to mind until you uncovered something that was

01 42 01PM **2** in your subconscious or your conscious that you

01 42 05PM **3** needed to work on and let go of.

01 42 08PM **4** And so by journaling all this stuff out,

01 42 11PM **5** you were able to overcome any of the issues that

01 42 15PM **6** you might have had.

01 42 16PM **7** Q. Did you do a lot of writing or journaling

01 42 19PM **8** that week?

01 42 20PM **9** A. Yes, I did.

01 42 20PM **10** Q. Did you stay up past 11:00 p.m. writing?

01 42 23PM **11** A. I did.

01 42 24PM **12** Q. On what nights?

01 42 28PM **13** A. On the Sunday and the Monday night, I

01 42 29PM **14** stayed up until 2:00 or 2:30.

01 42 33PM **15** Q. Where were you doing the writing until

01 42 35PM **16** 2:00 or 2:30 a.m. on Sunday and Monday night?

01 42 38PM **17** A. Either in the dining hall or in my room.

01 42 40PM **18** Q. Were there other participants in the

01 42 42PM **19** dining hall with you?

01 42 43PM **20** A. Yes.

01 42 44PM **21** Q. Writing?

01 42 44PM **22** A. Yes.

01 42 46PM **23** Q. About how many?

01 42 47PM **24** A. I would say 25.

01 43 00PM **25** Q. You told the jury when you first arrived

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01 43 03PM **1** at Angel Valley you went to the registration area,

01 43 07PM **2** filled out that paperwork, and you were given a

01 43 09PM **3** backpack. Will you tell the jury what was in that

01 43 12PM **4** backpack.

01 43 13PM **5** A. Well, there was salt and a water bottle,

01 43 16PM **6** and there was a notebook and pen. And I don't

01 43 22PM **7** recall what else was in the backpack.

01 43 24PM **8** Q. At some point did you get instructions

01 43 26PM **9** from Mr. Ray about what you were supposed to do

01 43 28PM **10** with that salt?

01 43 29PM **11** A. It was actually in the written

01 43 31PM **12** directions. And then we were told verbally.

01 43 34PM **13** Q. What were you told to do with the salt?

01 43 36PM **14** A. We were to take a teaspoon -- I think it

01 43 41PM **15** was one or two teaspoons in the water per day.

01 43 42PM **16** Q. One or two teaspoons of salt per day?

01 43 45PM **17** A. Yes.

01 43 46PM **18** Q. And did Mr. Ray explain to you why he

01 43 47PM **19** wanted you to take the salt?

01 43 49PM **20** A. Yes, he did.

01 43 50PM **21** Q. What did he say?

01 43 54PM **22** A. He didn't want us to become dehydrated.

01 43 54PM **23** Q. Throughout the week did Mr. Ray talk to

01 43 58PM **24** you about hydration?

01 43 59PM **25** A. Yes, he did.

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01 44 00PM **1** Q. Did he ever tell you why he was telling

01 44 02PM **2** you to hydrate?

01 44 03PM **3** A. He wanted us to remain hydrated and told

01 44 08PM **4** us we had to drink a lot of water, that we were in

01 44 11PM **5** the desert, and that we'd be facing challenges.

01 44 15PM **6** Q. Did you have -- who were your roommates,

01 44 25PM **7** by the way?

01 44 28PM **8** A. Mara, Jenny, and Theresa.

01 44 31PM **9** Q. Are you aware whether or not any of your

01 44 33PM **10** roommates stayed up all night doing the

01 44 37PM **11** recapitulations?

01 44 38PM **12** A. I know Theresa did.

01 44 42PM **13** Q. Do you know how many nights she stayed up

01 44 45PM **14** all night?

01 44 48PM **15** A. I only know of one for certain.

01 44 48PM **16** Q. Which night was that?

01 44 49PM **17** A. That was -- I'm not sure. I believe it

01 44 54PM **18** was the first night.

01 44 58PM **19** Q. Do you remember Theresa's last name?

01 44 59PM **20** A. Not offhand.

01 45 03PM **21** Q. Now, Ms. Phillips, yesterday did you have

01 45 17PM **22** an opportunity to listen to audio clips that were

01 45 21PM **23** on a thumb drive?

01 45 23PM **24** A. Yes.

01 45 23PM **25** Q. And do you recall listening to about

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01 45 26PM **1** 20 audio clips?

01 45 28PM **2** A. Yes.

01 45 29PM **3** Q. With respect to those audio clips, do you

01 45 33PM **4** recall today the circumstances surrounding the

01 45 38PM **5** clips that you listened to?

01 45 37PM **6** A. Yes.

01 45 37PM **7** Q. And did all of those audio clips that you

01 45 41PM **8** heard -- did you hear them from Mr. Ray during the

01 45 45PM **9** week of the Spiritual Warrior seminar?

01 45 47PM **10** A. Yes.

01 45 48PM **11** Q. And what you heard from that thumb

01 45 54PM **12** drive -- did they accurately reflect what you heard

01 45 58PM **13** at the Spiritual Warnor seminar in October

01 46 01PM **14** of 2009?

01 46 01PM **15** A. Yes.

01 46 02PM **16** Q. Was there anything on that thumb drive

01 46 04PM **17** that you heard yesterday that you did not hear at

01 46 08PM **18** the Spiritual Warrior seminar in 2009?

01 46 11PM **19** A. No.

01 46 18PM **20** MR. KELLY: Judge, may we approach?

01 46 22PM **21** THE COURT: Yes.

01 46 46PM **22** (Sidebar conference.)

01 46 46PM **23** THE COURT: Mr. Kelly?

01 46 49PM **24** MR. KELLY: Judge, thank you for the sidebar

01 46 51PM **25** conference. I believe what Ms. Polk has in her

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01:46:54PM 1 hand is a little thumb drive, Exhibit 734. I'm not
 01:47:00PM 2 sure what's on it. That's my first question.
 01:47:06PM 3 THE COURT: Okay. It's hard to examine it in
 01:47:12PM 4 this form.

01:47:18PM 5 Ms. Polk, what does it contain?

01:47:11PM 6 MS. POLK: Your Honor, I provided a copy of
 01:47:13PM 7 this to Mr. Li. It contains the 20 audio clips I
 01:47:17PM 8 played in my opening yesterday.

01:47:19PM 9 MR. KELLY: Judge, here's the problem -- and
 01:47:21PM 10 we attempted to discuss this a couple days ago.
 01:47:24PM 11 Our position is portions of this audiotape are
 01:47:28PM 12 going to be played. The entire tape needs to be
 01:47:31PM 13 played. It's not -- the government is not allowed
 01:47:35PM 14 to take it out of context.

01:47:36PM 15 THE COURT: That was covered in my order.

01:47:38PM 16 MS. POLK: Your Honor, I have no objection to
 01:47:43PM 17 the entire audio being admitted. I just want to
 01:47:47PM 18 make sure that the audio clips that I played got
 01:47:49PM 19 admitted. If the defense is willing to stipulate
 01:47:52PM 20 to the entire audio, we have marked that separately
 01:47:54PM 21 as exhibits, and that would be fine. I wouldn't
 01:47:57PM 22 need to move to admit these if the entire audio --
 01:48:01PM 23 if they will stipulate to that.

01:48:02PM 24 MR. KELLY: Judge, we were attempting to
 01:48:07PM 25 follow your directions. And what we understood was

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01:48:11PM 1 that there may be portions of the audiotape which
 01:48:15PM 2 are not admissible for separate purposes relating
 01:48:19PM 3 to privacy interests, relevance.

01:48:22PM 4 And so in this kind of quandary between
 01:48:28PM 5 the rules of completeness and protecting some other
 01:48:31PM 6 potential sensitive information, I guess my
 01:48:34PM 7 question up here today with this witness present
 01:48:37PM 8 and the jury is, we want to be allowed to listen to
 01:48:41PM 9 the entire tape, discuss with the Court and counsel
 01:48:45PM 10 what should be played to this jury as an entire
 01:48:50PM 11 presentation as Mr. Ray's statements, reserving the
 01:48:54PM 12 right to object to specific portions.

01:48:56PM 13 Does that make sense?

01:48:59PM 14 But then the question becomes today a
 01:49:01PM 15 different issue.

01:49:02PM 16 MS. DO: Your Honor, I don't think we've had
 01:49:04PM 17 the opportunity to listen to the excerpts and the
 01:49:07PM 18 surrounding context to determine whether or not
 01:49:09PM 19 there are any issues. We just haven't had that
 01:49:12PM 20 opportunity.

01:49:13PM 21 MS. POLK: Judge, they have had the entire
 01:49:16PM 22 audio for a long, long time. They disclosed it to
 01:49:20PM 23 the state on January 28. They've had all the
 01:49:22PM 24 audio.

01:49:23PM 25 I agree that these are excerpts, and I

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01:49:26PM 1 agree that the entire audio should come in. But at
 01:49:29PM 2 a minimum these excerpts that this witness has
 01:49:32PM 3 testified she heard, they should come in today. I
 01:49:35PM 4 have no objection to the entire audio being
 01:49:40PM 5 admitted either.

01:49:41PM 6 MR. KELLY: What's unique, Judge, this is not
 01:49:44PM 7 a question to the witness unless testimony under
 01:49:47PM 8 801(d)(2) -- what did you hear the defendant say?

01:49:50PM 9 I understood the foundational questions
 01:49:52PM 10 to be did you listen to this yesterday and does
 01:49:55PM 11 that refresh your recollection as to what he said.
 01:49:58PM 12 And then she wants to play it.

01:50:01PM 13 THE COURT: I thought it was establishing
 01:50:03PM 14 foundation. She heard all this and can testify
 01:50:06PM 15 that's what she heard at the 2009 seminar.

01:50:08PM 16 MS. POLK: It is, Judge. And I don't intend
 01:50:11PM 17 to play this right now. I want to move on. And I
 01:50:14PM 18 was establishing the foundation admission, not
 01:50:17PM 19 refreshing her recollection about anything.

01:50:19PM 20 MR. KELLY: I object to its admission. It
 01:50:21PM 21 unduly emphasizes a portion of a complete tape.

01:50:24PM 22 THE COURT: It's been a while since I've dealt
 01:50:27PM 23 with the rule. Isn't the situation now that you
 01:50:30PM 24 can admit the parts that you believe? I think
 01:50:33PM 25 that's how it works, Mr. Kelly.

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01:50:36PM 1 MR. KELLY: If that's the case, Judge.

01:50:37PM 2 THE COURT: I'm just waiting until -- I'm
 01:50:41PM 3 getting confronted with the issue now. That's how
 01:50:44PM 4 it would work. You can play the rest of it. You
 01:50:47PM 5 may have to play the start and the finish to do
 01:50:49PM 6 that. I don't think it's required to play the
 01:50:53PM 7 whole thing at that time. If I'm wrong, correct
 01:50:58PM 8 me.

01:50:59PM 9 MS. POLK: Says she doesn't want to play --

01:51:02PM 10 MR. KELLY: My point was not that she needed
 01:51:05PM 11 to, that she could not play it --

01:51:07PM 12 THE COURT: I understand.

01:51:08PM 13 MR. KELLY: -- as a redacted portion of the
 01:51:11PM 14 more complete admissible tape, but that if the jury
 01:51:15PM 15 went back with both tapes, it unduly emphasizes
 01:51:18PM 16 these 20 statements. That was my concern.

01:51:22PM 17 THE COURT: I think I haven't had that
 01:51:27PM 18 problem. It seemed to me you can have a separate
 01:51:29PM 19 one with yours as well and have them both.

01:51:32PM 20 I thought the other thing you might be
 01:51:34PM 21 concerned about is you being the party who would
 01:51:38PM 22 tender this embarrassing information and you didn't
 01:51:39PM 23 want to be in that position also.

01:51:41PM 24 MR. KELLY: Correct.

01:51:42PM 25 THE COURT: If you can redact that. I know --

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01 51 44PM 1 I don't know -- I assume the state's not objecting
01 51 46PM 2 to redacting embarrassing information in the other
01 51 51PM 3 part. I don't know.

01 51 56PM 4 MS. POLK: I'm not sure what the Court is
01 51 58PM 5 referring to.

01 51 55PM 6 THE COURT: I think one of the things the
01 51 56PM 7 defense has said -- Mr. Li was arguing this
01 51 59PM 8 before -- is people are talking about some very
01 52 02PM 9 personal things on some of these tapes. That's not
01 52 11PM 10 this tape. Those are different tapes.

01 52 15PM 11 The foundation is there so I'm going to
01 52 17PM 12 admit this. It needs to be added anyway because it
01 52 21PM 13 completes the record of what the opening was about.
01 52 23PM 14 So I'd like that on the record. This is what was
01 52 26PM 15 played in opening?

01 52 27PM 16 MS. POLK: Yes.

01 52 27PM 17 THE COURT: It's admitted. We can get down to
01 52 30PM 18 the refinements on how to present a statement.

01 52 35PM 19 MR. KELLY: Thank you.

01 52 38PM 20 THE COURT: Thank you.

01 52 40PM 21 MS. POLK: Thank you, Judge.

01 52 53PM 22 (End of sidebar conference.)

01 52 53PM 23 MS. POLK: Your Honor, the state moves for the
01 52 55PM 24 admission of Exhibit 734.

01 52 57PM 25 THE COURT: Anything else, Mr. Kelly, on that?
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01 52 59PM 1 MR. KELLY: No. Thank you, Judge.

01 53 00PM 2 THE COURT: Okay. That was 34?

01 53 05PM 3 MS. POLK: It says 734.

01 53 08PM 4 THE COURT: Exhibit 734 is admitted.

01 53 10PM 5 (Exhibit 734 admitted.)

01 53 10PM 6 MS. POLK: Thank you, Your Honor.

01 53 26PM 7 Q. Ms. Phillips, on Sunday, October 4, were
01 53 30PM 8 there group gatherings and lectures by Mr. Ray?

01 53 34PM 9 A. Yes, there were.

01 53 35PM 10 Q. Were there any other activities other
01 53 38PM 11 than lectures?

01 53 38PM 12 A. Lunch, dinner, breakfast, and lectures.

01 53 42PM 13 Q. Did you do any breathing exercises that
01 53 44PM 14 day?

01 53 45PM 15 A. No.

01 53 45PM 16 Q. When was the first day that you did
01 53 47PM 17 breathing exercises?

01 53 49PM 18 A. That was Monday evening.

01 53 50PM 19 Q. And then on Sunday were you shown any
01 53 52PM 20 clips from a film?

01 53 54PM 21 A. I don't recall seeing any clips on
01 54 00PM 22 Sunday.

01 54 02PM 23 Q. Was that on Monday as well?

01 54 02PM 24 A. I recall seeing clips of films during the
01 54 09PM 25 lectures and on Thursday.

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01 54 14PM 1 Q. All the clips that you were shown during
01 54 16PM 2 the Spiritual Warrior seminar week -- were they all
01 54 19PM 3 from one movie?

01 54 21PM 4 A. No.

01 54 21PM 5 Q. Multiple movies?

01 54 26PM 6 A. I believe it was multiple. The theme was
01 54 28PM 7 from one movie mostly.

01 54 31PM 8 Q. What was that movie?

01 54 32PM 9 A. The Last Samurai.

01 54 34PM 10 Q. Did you see a lot of clips from The Last
01 54 38PM 11 Samurai?

01 54 40PM 12 A. We did.

01 54 41PM 13 Q. What did Mr. Ray tell you about why he
01 54 44PM 14 was showing you clips from The Last Samurai?

01 54 50PM 15 A. He wanted us to live empathically and act
01 54 54PM 16 like the Samurai, with impeccability.

01 54 58PM 17 Q. What did that mean to you, to act with
01 55 01PM 18 impeccability?

01 55 02PM 19 A. With integrity.

01 55 07PM 20 Q. Let's talk about Monday, October 5. Was
01 55 11PM 21 that another early morning for you?

01 55 13PM 22 A. It was.

01 55 13PM 23 Q. How early?

01 55 15PM 24 A. I'm not certain. Normally on the event
01 55 20PM 25 days I usually wake up around 6:00.

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01 55 23PM 1 Q. Do you recall doing yoga on Monday
01 55 26PM 2 morning as well?

01 55 26PM 3 A. Yes, I do.

01 55 27PM 4 Q. That was after you had stayed up, I think
01 55 30PM 5 you testified, until 2:00 or 2:30 the night before?

01 55 33PM 6 A. Yes.

01 55 33PM 7 Q. Were you starting to feel tired?

01 55 36PM 8 A. Actually, what day are we talking about?

01 55 37PM 9 Q. Monday, October 5.

01 55 38PM 10 A. Because on the Sunday -- yes. We stayed
01 55 44PM 11 up and did the recapitulations and then in the
01 55 46PM 12 morning we got up and again did yoga.

01 55 51PM 13 Q. Were you starting to feel tired at that
01 55 53PM 14 point?

01 55 54PM 15 A. Yes.

01 55 55PM 16 Q. What occurred? What events occurred on
01 55 59PM 17 Monday, October 5, that you remember?

01 56 00PM 18 A. We had lectures, lunches and dinners. We
01 56 05PM 19 were told not to eat too heavily. And we did a
01 56 08PM 20 holotropic breathing in the evening.

01 56 11PM 21 Q. Had you heard of holotropic breathing
01 56 14PM 22 before?

01 56 14PM 23 A. Yes.

01 56 14PM 24 Q. Had you done it at other events?

01 56 17PM 25 A. Yes.

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01 56 17PM 1 Q. And you did it again on Monday,
 01 56 19PM 2 October 5?
 01 56 19PM 3 A. Yes.
 01 56 20PM 4 Q. Describe for the jury what the holotropic
 01 56 24PM 5 breathing was.
 01 56 27PM 6 A. They played very loud music.
 01 56 28PM 7 Q. How loud?
 01 56 31PM 8 A. Very loud. Nightclub loud.
 01 56 34PM 9 Q. With that loud music, can you hear the
 01 56 36PM 10 person next to you talking?
 01 56 40PM 11 A. If they're talking loudly, yes. And then
 01 56 44PM 12 you breathe in and out, breathing in through your
 01 56 48PM 13 nose, out through your mouth, at a rapid pace.
 01 56 53PM 14 Q. Is it like hyperventilating?
 01 56 57PM 15 A. You don't actually hyperventilate, but
 01 57 01PM 16 you do go into an altered state pretty quickly.
 01 57 03PM 17 Q. Would you describe for the jury when you
 01 57 05PM 18 use the term "altered state" --
 01 57 11PM 19 A. When you're in an altered state, your
 01 57 15PM 20 consciousness changes. You're experiencing a
 01 57 23PM 21 different state of being.
 01 57 25PM 22 Q. How are you experiencing a different
 01 57 27PM 23 state of being?
 01 57 28PM 24 A. When you're breathing like that and you
 01 57 29PM 25 have your eyes closed, it's like a dream. And you
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01 57 37PM 1 can see colors. You can hear sounds. You can see
 01 57 40PM 2 nothing. You're not aware of where you are.
 01 57 51PM 3 Q. How long on Monday, October 5, did that
 01 57 54PM 4 holotropic breath-work session last?
 01 57 58PM 5 A. It was a two-hour session.
 01 57 58PM 6 Q. Do you recall approximately what time it
 01 58 00PM 7 started?
 01 58 04PM 8 A. It was in the evening. I'm not sure if
 01 58 07PM 9 it was 9:00 or 10:00.
 01 58 09PM 10 Q. If we're looking at this schedule that's
 01 58 11PM 11 still on the overhead, this was an activity that
 01 58 14PM 12 started after dinner?
 01 58 16PM 13 A. Yes.
 01 58 16PM 14 Q. And it was held in a location called the
 01 58 19PM 15 "Crystal Hall"?
 01 58 20PM 16 A. The holotropic breathing was in the tent.
 01 58 23PM 17 Q. Did the tent have a name that you recall?
 01 58 26PM 18 A. Not that I recall.
 01 58 28PM 19 Q. Was there something other than the tent
 01 58 30PM 20 that was called the "Crystal Hall"?
 01 58 32PM 21 A. Yes.
 01 58 33PM 22 Q. What was that?
 01 58 47PM 23 A. That was the lecture hall.
 01 58 50PM 24 MR. KELLY: Judge, I stipulate to 124.
 01 58 50PM 25 THE COURT: Exhibit 124 is admitted.
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01 58 50PM 1 (Exhibit 124 admitted.)
 01 58 54PM 2 Q. BY MS. POLK: I'm going to put
 01 58 55PM 3 Exhibit 124 on the overhead, Ms. Phillips.
 01 59 06PM 4 Do you recall what this room is?
 01 59 08PM 5 A. That's the Crystal Hall.
 01 59 10PM 6 Q. What activity occurred in the Crystal
 01 59 12PM 7 Hall?
 01 59 12PM 8 A. That's where we had our lectures, and
 01 59 14PM 9 that's where the Samurai Warrior Game was.
 01 59 20PM 10 Q. Now, going back to Monday night
 01 59 24PM 11 sometime -- you said around -- I think you said
 01 59 26PM 12 around 9:00. You did a two-hour session of the
 01 59 29PM 13 holotropic breath work in a tent. Will you tell
 01 59 34PM 14 the jury what was approximately the air temperature
 01 59 36PM 15 in the tent.
 01 59 37PM 16 A. It was chilly. I don't know
 01 59 41PM 17 temperaturewise.
 01 59 46PM 18 Q. Was it cold?
 01 59 48PM 19 A. Yes, it was.
 01 59 50PM 20 Q. And then after that two-hour session,
 01 59 52PM 21 what did you do?
 01 59 53PM 22 A. I stayed up and continued writing for a
 01 59 56PM 23 little bit, and then I went to bed.
 01 59 58PM 24 Q. How much longer did you stay up?
 02 00 01PM 25 A. I believe I stayed up until around
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02 00 03PM 1 2:00 o'clock again.
 02 00 05PM 2 Q. Did other participants also stay up until
 02 00 08PM 3 2:00 o'clock?
 02 00 08PM 4 A. They did.
 02 00 09PM 5 Q. Do you know about how many?
 02 00 11PM 6 A. No, I don't.
 02 00 13PM 7 Q. And where were you when you were doing
 02 00 15PM 8 your writing this time on Monday night?
 02 00 17PM 9 A. I went to the dining hall again.
 02 00 19PM 10 Q. Were there others there as well?
 02 00 20PM 11 A. Yes.
 02 00 21PM 12 Q. Why did you stay up again until
 02 00 24PM 13 2:00 a.m.? At this point you've had very little
 02 00 27PM 14 sleep since Sunday. Why did you stay up again
 02 00 31PM 15 late?
 02 00 31PM 16 A. We were urged that we only had so much
 02 00 33PM 17 time. And we were urged to get as much work done
 02 00 36PM 18 as we could in the short time available to us.
 02 00 38PM 19 Q. Who was it that was urging you to get as
 02 00 41PM 20 much work done as you could?
 02 00 42PM 21 A. It was Mr. Ray. And then also the Dream
 02 00 48PM 22 Team members were encouraging us as well.
 02 01 00PM 23 Q. Let's move on to Tuesday, October 6.
 02 01 02PM 24 Was that an early morning for you as
 02 01 04PM 25 well?
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02 01 04PM 1 A. I believe it was.

02 01 07PM 2 Q. Did you do yoga that morning as well?

02 01 11PM 3 A. I believe that we did. I cannot recall

02 01 14PM 4 for certain at this time. I wrote in my journal,

02 01 17PM 5 but I don't have a clear memory today.

02 01 24PM 6 Q. You were keeping a journal throughout

02 01 28PM 7 that week?

02 01 28PM 8 A. I actually -- I wrote the journal the day

02 01 33PM 9 I got home. Because I knew that things would get

02 01 38PM 10 fuzzy.

02 01 38PM 11 Q. And do you think the answer to that

02 01 40PM 12 question I just asked you is in the journal?

02 01 43PM 13 A. Yes.

02 01 45PM 14 Q. If you had a chance to look at it? Would

02 01 47PM 15 that help refresh your recollection about the

02 01 50PM 16 answer to my question?

02 01 51PM 17 A. Yes. Please.

02 01 52PM 18 THE COURT: Counsel, would you check the

02 01 54PM 19 number on that exhibit again, please, so we know

02 01 58PM 20 what we're talking about.

02 01 59PM 21 MS. POLK: Exhibit 200, Your Honor.

02 02 01PM 22 THE COURT: What was the one before?

02 02 03PM 23 MR. KELLY: I believe it was misspoken. It's

02 02 08PM 24 142.

02 02 08PM 25 THE COURT: The clerk noticed that also. The

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02 02 09PM 1 prior exhibit was 142.

02 02 20PM 2 Q. BY MS. POLK: I'm going to show you

02 02 21PM 3 what's marked as Exhibit 200. Is that the journal

02 02 24PM 4 you're referring to?

02 02 25PM 5 A. Yes, it is.

02 02 26PM 6 Q. Take a moment to look through it to see

02 02 28PM 7 if you can remember whether or not you got up early

02 02 31PM 8 on Tuesday morning and did yoga.

02 03 11PM 9 A. Tuesday morning we got up and did yoga

02 03 13PM 10 then had breakfast.

02 03 16PM 11 Q. What other activities occurred Tuesday

02 03 18PM 12 morning?

02 03 19PM 13 A. We had more lectures.

02 03 23PM 14 Q. Was there a general theme to the lectures

02 03 27PM 15 that Mr. Ray was giving during the Spiritual

02 03 30PM 16 Warrior seminar?

02 03 31PM 17 A. A lot of it was on The Samurai Warrior.

02 03 38PM 18 Q. What was the point or the theme Of the

02 04 00PM 19 Samurai Warrior?

02 03 40PM 20 A. To live with honor and impeccability.

02 03 44PM 21 Q. What did that mean, to live with honor?

02 03 49PM 22 A. To live by your words, speak your words,

02 03 49PM 23 speak your truth.

02 03 51PM 24 Q. Did that have some relationship to what

02 03 54PM 25 you were writing, your recapitulations?

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02 03 57PM 1 A. We needed to be honest with ourselves.

02 04 00PM 2 Q. In your writing?

02 04 01PM 3 A. Yes.

02 04 01PM 4 Q. Were you given specific writing

02 04 04PM 5 assignments?

02 04 08PM 6 A. Some people were given more specific

02 04 14PM 7 assignments. We were told to just start writing

02 04 18PM 8 and it would come to us.

02 04 21PM 9 Q. Start writing about anything?

02 04 23PM 10 A. Yes.

02 04 24PM 11 Q. Did you do that?

02 04 25PM 12 A. I did.

02 04 26PM 13 Q. Did things come to you to write about?

02 04 28PM 14 A. They did.

02 04 38PM 15 Q. Were you told at some point on Tuesday

02 04 39PM 16 that you would be going out into the desert?

02 04 42PM 17 A. Yes.

02 04 42PM 18 Q. Tell the jury what you were told on

02 04 45PM 19 Tuesday.

02 04 46PM 20 A. We were told that we were going to go on

02 04 49PM 21 a Vision Quest and we were only allowed to bring

02 04 54PM 22 certain items with us. And we were not allowed to

02 04 57PM 23 bring food or water. And he said elimination would

02 05 01PM 24 be a factor so eat light and --

02 05 06PM 25 Q. Why would elimination be a factor?

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02 05 08PM 1 A. Because we would be in our circle alone

02 05 11PM 2 out in the desert for so many hours.

02 05 14PM 3 Q. Did you eat light on Tuesday, then?

02 05 16PM 4 A. I did.

02 05 17PM 5 Q. Did you have breakfast?

02 05 19PM 6 A. I did.

02 05 19PM 7 Q. Did you have lunch?

02 05 21PM 8 A. I actually did not. I had a granola bar,

02 05 25PM 9 I believe, mid-morning.

02 05 27PM 10 Q. On Tuesday was a code of silence imposed

02 05 32PM 11 at some point?

02 05 33PM 12 A. It was.

02 05 33PM 13 Q. Who imposed a code of silence?

02 05 35PM 14 A. Mr. Ray.

02 05 38PM 15 Q. Did he tell you what "code of silence"

02 05 38PM 16 meant?

02 05 39PM 17 A. We were not allowed to speak.

02 05 42PM 18 Q. Was there a consequence for breaking the

02 05 45PM 19 code of silence?

02 05 46PM 20 A. Yes, there was.

02 05 47PM 21 Q. Tell the jury what that was.

02 05 49PM 22 A. If we broke our silence, then we were

02 05 53PM 23 dishonorable and we were to tell our team leader

02 05 57PM 24 and commit hara-kiri, and basically, pretend that

02 06 01PM 25 we're dead and not move.

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02 06 02PM 1 Q. Did that occur even before the Samurai
02 06 05PM 2 Game?
02 06 05PM 3 A. Yes, it did.
02 06 05PM 4 Q. When did you first learn what the code of
02 06 05PM 5 silence involved?
02 06 11PM 6 A. I've been to other events where we've
02 06 16PM 7 been put into silence. So I knew what to expect.
02 06 21PM 8 And I know you're not allowed to speak.
02 06 23PM 9 Q. When did you first learn you and other
02 06 25PM 10 participants at the Spiritual Warrior 2009 event --
02 06 28PM 11 when did you first learn about a code of silence?
02 06 33PM 12 A. On Tuesday we were put into silence.
02 06 36PM 13 That's when we learned about it.
02 06 37PM 14 Q. You mentioned you had to go to a team
02 06 40PM 15 leader. Were you divided into teams at some point?
02 06 43PM 16 A. Yes, we were.
02 06 44PM 17 Q. How many teams?
02 06 45PM 18 A. Two.
02 06 45PM 19 Q. When were you divided into teams?
02 06 48PM 20 A. In the afternoon.
02 06 48PM 21 Q. What team were you on?
02 06 51PM 22 A. I believe Bill's team.
02 06 54PM 23 Q. Was there one leader for each of the two
02 06 57PM 24 teams?
02 06 57PM 25 A. Yes.
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02 06 57PM 1 Q. Do you remember Bill's last name?
02 06 58PM 2 A. No.
02 06 59PM 3 Q. Do you know how the team leaders were
02 07 02PM 4 selected?
02 07 03PM 5 A. I don't recall.
02 07 08PM 6 Q. Were the team leaders also paying
02 07 08PM 7 participants at the Spiritual Warrior events?
02 07 12PM 8 A. They were.
02 07 12PM 9 Q. So let's talk about Tuesday afternoon.
02 07 17PM 10 Do you recall approximately when it was that you
02 07 21PM 11 were put under a code of silence?
02 07 22PM 12 A. I think it was around 2:30 in the
02 07 26PM 13 afternoon.
02 07 26PM 14 Q. Did Mr. Ray explain to you why he was
02 07 30PM 15 imposing a code of silence?
02 07 31PM 16 A. It was my understanding that he wanted us
02 07 41PM 17 to go within and to be quiet and to prepare.
02 07 46PM 18 Q. When was that code of silence lifted?
02 07 48PM 19 A. It was lifted after the game. After the
02 07 58PM 20 game? I'm not sure.
02 08 02PM 21 Q. You mentioned the Vision Quest. When you
02 08 05PM 22 went on the Vision Quest, were you under a code of
02 08 05PM 23 silence?
02 08 08PM 24 A. Yes, we were.
02 08 10PM 25 Q. Was the code of silence lifted after the
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02 08 13PM 1 Vision Quest
02 08 13PM 2 A. It was lifted after breakfast the next
02 08 16PM 3 day when we reached the Crystal Hall.
02 08 18PM 4 Q. And between 2:30 on Tuesday and Thursday
02 08 22PM 5 morning, which is when your Vision Quest ended, had
02 08 26PM 6 the code of silence been lifted at all?
02 08 28PM 7 A. Only for the game. For certain people in
02 08 31PM 8 the game.
02 08 31PM 9 Q. Okay. So, essentially, you were under a
02 08 34PM 10 code of silence from Tuesday afternoon until
02 08 36PM 11 Thursday morning?
02 08 37PM 12 A. Yes.
02 08 38PM 13 Q. Did you break that code of silence?
02 08 41PM 14 A. I did.
02 08 42PM 15 Q. When?
02 08 42PM 16 A. Before dinner on the Tuesday I went to
02 08 48PM 17 the washroom. And somebody banged on the door very
02 08 53PM 18 loudly. And I said, yes, I'm in here. And I broke
02 08 58PM 19 the code of silence.
02 09 01PM 20 Q. What did you feel or how did you feel
02 09 04PM 21 about breaking the code of silence?
02 09 06PM 22 A. Well, I felt terribly disappointed in
02 09 09PM 23 myself and for letting my team down. Because it
02 09 13PM 24 happened very quickly.
02 09 15PM 25 Q. What did you do?
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02 09 18PM 1 A. I went to our team leader and told him
02 09 19PM 2 what happened. And I told the Dream Team leaders
02 09 23PM 3 what happened. And they said, if you have any
02 09 27PM 4 honor, you will lie down and be dead now.
02 09 30PM 5 Q. What time was this that you went to the
02 09 32PM 6 washroom and broke the code of silence?
02 09 35PM 7 A. I believe it was around 2:30.
02 09 43PM 8 Q. Shortly after the code of silence was
02 09 45PM 9 imposed?
02 09 45PM 10 A. Yes.
02 09 46PM 11 Q. And so what did you do after talking to
02 09 50PM 12 the team leader and the Dream Team about how you
02 09 52PM 13 had broken the code of silence?
02 09 54PM 14 A. I laid down on the cement floor.
02 09 57PM 15 Q. Where were you?
02 09 58PM 16 A. In the Crystal Hall.
02 10 00PM 17 Q. Did that cement floor have any carpeting
02 10 03PM 18 on it?
02 10 04PM 19 A. No, it did not.
02 10 05PM 20 Q. How long did you continue to lie down on
02 10 18PM 21 that floor?
02 10 21PM 22 A. I was there during dinner. And one of
02 10 24PM 23 the Angels of Death came and got me up to use the
02 10 28PM 24 washroom. And they brought us back. And I laid
02 10 32PM 25 down on the floor again. And this time I was able
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02 10 34PM 1 **to lay down on a blanket. And they covered me with**
 02 10 38PM 2 **a blanket.**
 02 10 40PM 3 **Q.** I'm going to put on the overhead
 02 10 42PM 4 Exhibit 142 again.
 02 10 44PM 5 Is this the room you were in on Tuesday
 02 10 46PM 6 afternoon around 2:30 when you had broken the code
 02 10 48PM 7 of silence?
 02 10 49PM 8 **A. Yes.**
 02 10 49PM 9 **Q.** And that appears to be a maroon-covered
 02 10 54PM 10 floor?
 02 10 54PM 11 **A. Yes.**
 02 10 55PM 12 **Q.** But it's your testimony that that is a
 02 10 57PM 13 cement floor?
 02 10 58PM 14 **A. I think I used the term "cement" because**
 02 11 03PM 15 **it was cold. I'm not sure exactly what kind of**
 02 11 06PM 16 **floor it was.**
 02 11 09PM 17 **Q.** What activity was going on shortly before
 02 11 12PM 18 you broke the code of silence?
 02 11 13PM 19 **A. We had been told the rules of the Samurai**
 02 11 19PM 20 **Warrior Game.**
 02 11 19PM 21 **Q.** And then you took a break?
 02 11 21PM 22 **A. Yes.**
 02 11 21PM 23 **Q.** And that's when you went to use the
 02 11 24PM 24 washroom?
 02 11 24PM 25 **A. Yes.**

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02 11 24PM 1 **Q.** Just to make sure I have it straight,
 02 11 27PM 2 then, a code of silence was imposed, you said,
 02 11 29PM 3 around 2:30. Is that correct?
 02 11 31PM 4 **A. Yes.**
 02 11 31PM 5 **Q.** And then you were given the rules for an
 02 11 34PM 6 upcoming game called the "Samurai Game"?
 02 11 37PM 7 **A. Yes.**
 02 11 37PM 8 **Q.** And then you took a short break?
 02 11 38PM 9 **A. Yes.**
 02 11 39PM 10 **Q.** And you went to the washroom?
 02 11 41PM 11 **A. Yes.**
 02 11 41PM 12 **Q.** And then you came back and had to lay on
 02 11 44PM 13 the floor?
 02 11 44PM 14 **A. Yes.**
 02 11 45PM 15 **Q.** Tell the jury, then, about this game
 02 11 48PM 16 called the "Samurai Game." Was that a game you had
 02 11 52PM 17 played in other seminars that you had participated
 02 11 57PM 18 in by Mr. Ray?
 02 11 57PM 19 **A. I had never experienced it before.**
 02 11 59PM 20 **Q.** Had you heard from that sneak preview
 02 12 02PM 21 that you had gotten from a friend about this thing
 02 12 07PM 22 called a "Samurai Game"?
 02 12 07PM 23 **A. I knew there was a game. I did not know**
 02 12 09PM 24 **the rules.**
 02 12 10PM 25 **Q.** The first time, then, that you learned

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02 12 13PM 1 about the Samurai Game was on Tuesday afternoon?
 02 12 18PM 2 **A. Yes.**
 02 12 18PM 3 **Q.** Will you tell the jury what Mr. Ray told
 02 12 19PM 4 you about the Samurai Game.
 02 12 21PM 5 **A. He was to play God. We were to be in two**
 02 12 27PM 6 **teams. Anyone who talked to God or lost or broke a**
 02 12 33PM 7 **rule had to lie down and could not move. If you**
 02 12 37PM 8 **moved, two more of your teammates had to commit**
 02 12 42PM 9 **hara-kiri and die as well.**
 02 12 43PM 10 **Q.** What does "hara-kiri" mean?
 02 12 45PM 11 **A. To kill yourself with honor.**
 02 12 48PM 12 **Q.** Was this game to be played under the code
 02 12 54PM 13 of silence?
 02 12 54PM 14 **A. I am not sure. I believe only certain**
 02 13 01PM 15 **people. There was a lot of confusion, and I'm not**
 02 13 07PM 16 **sure. I was not participating in the game. I was**
 02 13 11PM 17 **only listening.**
 02 13 13PM 18 **Q.** Did the game take place in the Crystal
 02 13 16PM 19 Hall?
 02 13 18PM 20 **A. It did.**
 02 13 17PM 21 **Q.** Did Mr. Ray tell you what the purpose of
 02 13 22PM 22 the Samurai Game was?
 02 13 26PM 23 **A. I don't recall.**
 02 13 26PM 24 **Q.** Did Mr. Ray tell you why you had to obey
 02 13 34PM 25 his code of silence?

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02 13 37PM 1 **A. He was the leader, and we had to follow**
 02 13 46PM 2 **what he said.**
 02 13 47PM 3 **Q.** Ms. Phillips, why did you feel like you
 02 13 51PM 4 had to follow what Mr. Ray was saying?
 02 13 53PM 5 **A. He was the person I entrusted myself to**
 02 13 59PM 6 **in the seminar to learn from. And I felt he had a**
 02 14 03PM 7 **reason behind his request.**
 02 14 08PM 8 **Q.** When approximately did that Samurai Game
 02 14 11PM 9 begin?
 02 14 11PM 10 **A. I believe it was after dinner.**
 02 14 22PM 11 **Q.** From the time that you broke the code of
 02 14 25PM 12 silence and you lay down on the floor in the
 02 14 27PM 13 Crystal Hall until dinner, you laid on the floor?
 02 14 30PM 14 **A. I did.**
 02 14 31PM 15 **Q.** What was going on for the other
 02 14 33PM 16 participants?
 02 14 38PM 17 **MR. KELLY: Objection, Your Honor. Lack of**
 02 14 39PM 18 **foundation.**
 02 14 41PM 19 **THE COURT: Sustained on foundation.**
 02 14 44PM 20 **Q.** BY MS. POLK: Ms. Phillips, after you
 02 14 48PM 21 committed hara-kiri and you laid down on the floor
 02 14 49PM 22 in this room, were the other participants still in
 02 14 53PM 23 the room?
 02 14 53PM 24 **A. They left.**
 02 14 54PM 25 **Q.** What time did they leave?

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02 14 57PM 1 **A. My eyes were closed and I'm not sure of**
 02 14 59PM 2 **the time.**
 02 14 59PM 3 **Q. Did they leave before dinner?**
 02 15 00PM 4 **A. They did.**
 02 15 00PM 5 **Q. Did you hear any discussion about the**
 02 15 08PM 6 **Samurai Game when you were lying on the floor?**
 02 15 09PM 7 **A. I did.**
 02 15 10PM 8 **Q. What did you hear?**
 02 15 12PM 9 **MR. KELLY: Objection, Your Honor. It's**
 02 15 14PM 10 **clearly hearsay.**
 02 15 15PM 11 **THE COURT: Sustained.**
 02 15 17PM 12 **Q. BY MS. POLK: Did you hear Mr. Ray talk**
 02 15 18PM 13 **about the Samurai Game while you were lying on the**
 02 15 21PM 14 **floor?**
 02 15 21PM 15 **A. I heard the game going on.**
 02 15 28PM 16 **Q. Did you hear --**
 02 15 29PM 17 **A. The game really began after we were led**
 02 15 34PM 18 **to the graveyard after dinner.**
 02 15 36PM 19 **Q. Let's see if we can walk through just**
 02 15 36PM 20 **step by step. You told us around 2:30 you had to**
 02 15 42PM 21 **lay down on the floor in the Crystal Hall?**
 02 15 47PM 22 **MR. KELLY: Objection, Your Honor. Asked and**
 02 15 48PM 23 **answered, cumulative.**
 02 15 50PM 24 **THE COURT: Overruled.**
 02 15 52PM 25 **Q. MS. POLK: How long did you remain lying**
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02 15 53PM 1 **on the floor in the Crystal Hall?**
 02 15 55PM 2 **A. I know I was lying still for about five**
 02 15 58PM 3 **hours total.**
 02 16 00PM 4 **Q. In one location?**
 02 16 03PM 5 **A. Yes.**
 02 16 05PM 6 **Q. Were you lying still on another floor in**
 02 16 08PM 7 **another location?**
 02 16 09PM 8 **A. Yes.**
 02 16 09PM 9 **Q. And does that include the five hours?**
 02 16 13PM 10 **A. I couldn't be certain now.**
 02 16 15PM 11 **Q. Do you want to take a moment again to**
 02 16 17PM 12 **look at the journal to see if that helps you**
 02 16 21PM 13 **remember these events?**
 02 16 50PM 14 **A. I am mistaken in my time line.**
 02 16 53PM 15 **Q. Okay.**
 02 16 55PM 16 **A. I had remembered 2:00 and 2:30 very**
 02 16 58PM 17 **clearly because that's when I had noticed that I**
 02 17 04PM 18 **had a personal hygiene problem coming up. And I**
 02 17 09PM 19 **knew that the time in the desert was going to be**
 02 17 13PM 20 **more of a challenge for me. And around 3:34 the**
 02 17 17PM 21 **group was put into silence.**
 02 17 26PM 22 **Q. Okay. Let me ask you, then. Your**
 02 17 26PM 23 **testimony about using the restroom and breaking the**
 02 17 28PM 24 **code of silence then happened after 3:30 or 4:00?**
 02 17 32PM 25 **A. Yes.**
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02 17 33PM 1 **Q. Do you have a recollection now of after**
 02 17 35PM 2 **you broke the code of silence you said you laid**
 02 17 40PM 3 **down on the floor?**
 02 17 41PM 4 **A. Yes.**
 02 17 41PM 5 **Q. Was that in this room, the Crystal Hall?**
 02 17 43PM 6 **A. It was.**
 02 17 44PM 7 **Q. Were the other participants with you in**
 02 17 47PM 8 **the Crystal Hall while you were lying down on the**
 02 17 50PM 9 **floor?**
 02 17 50PM 10 **A. No. We had been let go to go for dinner.**
 02 17 54PM 11 **Q. And what happened to you when you were**
 02 17 55PM 12 **let go -- when they were let go for dinner?**
 02 17 59PM 13 **A. I lay down on the floor and missed**
 02 18 03PM 14 **dinner.**
 02 18 04PM 15 **Q. Were your eyes closed when you were lying**
 02 18 07PM 16 **on the floor?**
 02 18 08PM 17 **A. Yes.**
 02 18 08PM 18 **Q. And why was that?**
 02 18 09PM 19 **A. We were dead. We were not allowed to**
 02 18 14PM 20 **open our eyes. We were not allowed to move.**
 02 18 17PM 21 **Q. Is it your testimony you were on this**
 02 18 20PM 22 **floor for five hours, "this floor" being the**
 02 18 22PM 23 **Crystal Hall?**
 02 18 23PM 24 **A. No. I was there until after dinner when**
 02 18 25PM 25 **everyone came back and the dead were brought back**
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02 18 28PM 1 **to life to watch the movie. And they did a**
 02 18 31PM 2 **Holosync meditation. And that's when the game**
 02 18 34PM 3 **began and we were led to the tent, to the**
 02 18 37PM 4 **graveyard.**
 02 18 38PM 5 **Q. In terms of a time line, then, from 4:00**
 02 18 42PM 6 **until -- do you have any idea what time it was that**
 02 18 49PM 7 **the others went to dinner?**
 02 18 49PM 8 **A. Dinner was around 6:00.**
 02 18 51PM 9 **Q. You remained on the floor?**
 02 18 53PM 10 **A. Yes.**
 02 18 53PM 11 **Q. Were you allowed to get up at any point**
 02 18 54PM 12 **to use the restroom, for example?**
 02 18 55PM 13 **A. Yes. Aaron came and got us, took us to**
 02 18 59PM 14 **the wash room.**
 02 18 59PM 15 **Q. Who did?**
 02 19 00PM 16 **A. Aaron.**
 02 19 00PM 17 **Q. Who is Aaron?**
 02 19 02PM 18 **A. One of the Dream Team members.**
 02 19 04PM 19 **Q. Do you know what time he took you to use**
 02 19 06PM 20 **the washroom?**
 02 19 06PM 21 **A. No, I don't.**
 02 19 07PM 22 **Q. Was it after the others had left for**
 02 19 09PM 23 **dinner?**
 02 19 10PM 24 **A. Yes, it was.**
 02 19 10PM 25 **Q. At that time were you allowed to open**
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02 19 12PM 1 your eyes?

02 19 12PM 2 **A. Yes. He allowed us to open our eyes.**

02 19 15PM 3 **Q.** Were you able to look around and see how

02 19 15PM 4 many other people at that point were dead?

02 19 15PM 5 **A. There were only a few of us in the**

02 19 23PM 6 **Crystal Hall.**

02 19 23PM 7 **Q.** Do you recall names of any of the other

02 19 25PM 8 participants at that point who were lying with you

02 19 28PM 9 on the floor?

02 19 28PM 10 **A. I only recall Theresa and the one girl**

02 19 31PM 11 **who I forget her name. And she spoke to James and**

02 19 38PM 12 **had to commit hara-kiri, instantly die on the spot.**

02 19 42PM 13 **Q.** When did that happen that someone had

02 19 44PM 14 spoken to Mr. Ray?

02 19 46PM 15 **A. It was after the game began and she**

02 19 48PM 16 **wanted to ask a clarifying question.**

02 19 51PM 17 **Q.** Just so I understand --

02 19 56PM 18 **MR. KELLY:** Your Honor, I'm going to object to

02 19 57PM 19 the hearsay basis of this information.

02 20 13PM 20 **THE COURT:** Overruled.

02 20 18PM 21 **Q.** BY MS. POLK: Ms. Phillips, did the

02 20 20PM 22 Samurai Game begin in the Crystal Hall?

02 20 22PM 23 **A. It did.**

02 20 23PM 24 **Q.** You were lying on the floor with your

02 20 25PM 25 eyes closed?

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02 20 26PM 1 **A. Yes.**

02 20 28PM 2 **Q.** You could still hear?

02 20 27PM 3 **A. Yes.**

02 20 28PM 4 **Q.** Shortly after it began, you heard what?

02 20 30PM 5 **A. Well, they moved us to the tent. And**

02 20 33PM 6 **they had set up speakers so that we could hear the**

02 20 36PM 7 **battle. And there was music, and we could hear**

02 20 39PM 8 **shouting, and we could hear the game commencing.**

02 20 46PM 9 **Q.** When was it that you were moved to the

02 20 49PM 10 tent?

02 20 50PM 11 **A. It was after dinner, after the Holosync.**

02 21 00PM 12 **MR. KELLY:** Judge, I'd ask if the witness is

02 21 03PM 13 refreshing her recollection with the written

02 21 07PM 14 journal?

02 21 08PM 15 **THE COURT:** Is that what's occurring?

02 21 10PM 16 **THE WITNESS:** I'm sorry. Yes.

02 21 12PM 17 **THE COURT:** Thank you.

02 21 13PM 18 **Q.** BY MS. POLK: Ms. Phillips, at any time

02 21 16PM 19 if you need to refresh your recollection, you can

02 21 20PM 20 look at your journal. But then look up and testify

02 21 27PM 21 from what you're remembering.

02 21 30PM 22 You mentioned that another girl spoke to

02 21 35PM 23 Mr. Ray to clarify the parameters or the terms of

02 21 35PM 24 the Samurai Game?

02 21 35PM 25 **A. Yes.**

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02 21 35PM 1 **Q.** When did that occur?

02 21 36PM 2 **A. At the beginning of the game.**

02 21 38PM 3 **Q.** And where did that occur?

02 21 39PM 4 **A. In the Crystal Hall.**

02 21 41PM 5 **Q.** Were you present?

02 21 42PM 6 **A. Yes.**

02 21 42PM 7 **Q.** Were you lying on the floor?

02 21 43PM 8 **A. Yes.**

02 21 43PM 9 **Q.** But you could hear?

02 21 45PM 10 **A. Yes.**

02 21 46PM 11 **Q.** What did you hear Mr. Ray say to that

02 21 48PM 12 girl when she spoke up to clarify the rules?

02 21 51PM 13 **A. Die.**

02 21 53PM 14 **Q.** And later when you were able to open your

02 21 56PM 15 eyes, were you able to identify who that girl was

02 22 00PM 16 that had to die instantly?

02 22 01PM 17 **A. I know who it was. But I don't know her**

02 22 05PM 18 **name.**

02 22 05PM 19 **Q.** How was it -- how did the members of

02 22 12PM 20 Mr. Ray's staff get you from the Crystal Hall to

02 22 15PM 21 the tent?

02 22 16PM 22 **A. We were allowed to stand up with our eyes**

02 22 20PM 23 **closed. Our hands were placed on the shoulders of**

02 22 22PM 24 **the person in front of us, and we were led outside.**

02 22 26PM 25 **When we were outside, we were allowed to find our**

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02 22 29PM 1 **shoes. And then we were to close our eyes again**

02 22 32PM 2 **and we were led down to the tent.**

02 22 34PM 3 **Q.** How far was the tent from the Crystal

02 22 37PM 4 Hall?

02 22 37PM 5 **A. One-and-a-half-, two-minute walk.**

02 22 41PM 6 **Q.** Did you do that walk in the darkness?

02 22 43PM 7 **A. Yes.**

02 22 45PM 8 **Q.** And then when you got to the tent, what

02 22 51PM 9 happened?

02 22 52PM 10 **A. They laid us down and covered us with**

02 22 55PM 11 **blankets.**

02 22 56PM 12 **Q.** Did you get to use the restroom during

02 22 58PM 13 that period?

02 22 58PM 14 **A. No.**

02 22 59PM 15 **Q.** When was it that you got to use the

02 23 06PM 16 restroom?

02 23 06PM 17 **A. It was before they came back from dinner.**

02 23 08PM 18 **Q.** When you were still in the Crystal Hall?

02 23 10PM 19 **A. Yes.**

02 23 11PM 20 **Q.** Who let you use the restroom then?

02 23 13PM 21 **A. Aaron.**

02 23 14PM 22 **Q.** Did you get to open your eyes for that?

02 23 16PM 23 **A. Yes.**

02 23 23PM 24 **Q.** During the time that you laid on the

02 23 24PM 25 floor in the Crystal Hall, were you able to move?

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02 23 28PM 1 **A. No.**

02 23 28PM 2 **Q.** How about to find a more comfortable

02 23 33PM 3 position?

02 23 33PM 4 **A. No.**

02 23 38PM 5 **Q.** What position did you lay yourself in

02 23 38PM 6 when you laid down?

02 23 40PM 7 **A. I tried to lay myself down in a**

02 23 42PM 8 **comfortable position with my hands folded on my**

02 23 46PM 9 **abdomen.**

02 23 46PM 10 **Q.** Did that get uncomfortable?

02 23 48PM 11 **A. Yes, it did.**

02 23 49PM 12 **Q.** How uncomfortable?

02 23 50PM 13 **A. It felt like I had been hit in the head**

02 23 53PM 14 **by a two-by-four, and my hands and feet were numb.**

02 23 56PM 15 **Q.** When did you have that feeling?

02 23 58PM 16 **A. Sometime after laying there for quite a**

02 24 05PM 17 **while.**

02 24 05PM 18 **Q.** Once you were led to the tent, you were

02 24 10PM 19 given a blanket. Was that for under you or over

02 24 14PM 20 you?

02 24 15PM 21 **A. We were laying on yoga mats, I believe,**

02 24 18PM 22 **and they covered us with blankets.**

02 24 20PM 23 **Q.** Was it cold in that tent?

02 24 22PM 24 **A. It was.**

02 24 23PM 25 **Q.** Did Aaron Bennett have a title as part of

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02 24 30PM 1 the Samurai Game?

02 24 30PM 2 **A. I don't recall.**

02 24 32PM 3 **Q.** Did you ever hear the term "Angel of

02 24 35PM 4 Death"?

02 24 35PM 5 **A. Yes.**

02 24 35PM 6 **Q.** In connection with what?

02 24 37PM 7 **A. The Dream Team members were called the**

02 24 40PM 8 **"Angels of Death."**

02 24 41PM 9 **Q.** Who called them that?

02 24 42PM 10 **A. James Ray and the Dream Team called**

02 24 46PM 11 **themselves that.**

02 24 47PM 12 **Q.** After you were taken to the tent and you

02 24 54PM 13 were given this time a blanket to cover yourself,

02 24 56PM 14 did Mr. Ray ever come in and make a comment about

02 25 00PM 15 that?

02 25 00PM 16 **A. Not in the tent.**

02 25 03PM 17 **Q.** Where did he make a comment about your

02 25 07PM 18 blanket?

02 25 08PM 19 **A. In the Crystal Hall after dinner before**

02 25 12PM 20 **everyone else came in.**

02 25 13PM 21 **Q.** What did he say?

02 25 17PM 22 **A. He gave crap to the Dream Team for making**

02 25 17PM 23 **it easy on us.**

02 25 18PM 24 **Q.** Did you feel that it was easy, this

02 25 22PM 25 experience?

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02 25 23PM 1 **A. No.**

02 25 28PM 2 **Q.** Why, Ms. Phillips, did you continue to

02 25 31PM 3 abide by the rules of this game if you were so

02 25 35PM 4 uncomfortable?

02 25 37PM 5 **A. I've been through rough things before. I**

02 25 42PM 6 **didn't think it was going to be so torturous, and I**

02 25 47PM 7 **felt that there was still value to be gained.**

02 25 50PM 8 **Q.** Did you still feel there was something

02 25 52PM 9 Mr. Ray knew about this exercise that would help

02 25 56PM 10 you?

02 25 57PM 11 **A. Yes.**

02 25 57PM 12 **Q.** Now that you were -- let's go to the tent

02 26 10PM 13 where you were lying on a yoga mat. Did the

02 26 14PM 14 Samurai Game continue?

02 26 15PM 15 **A. It did.**

02 26 15PM 16 **Q.** Were your eyes closed?

02 26 17PM 17 **A. Yes.**

02 26 17PM 18 **Q.** You would hear what was going on?

02 26 20PM 19 **A. Yes.**

02 26 21PM 20 **Q.** Could you hear specific types of games

02 26 23PM 21 being played?

02 26 24PM 22 **A. Yes.**

02 26 25PM 23 **Q.** And could you hear when people were

02 26 28PM 24 ordered or pronounced dead by Mr. Ray?

02 26 38PM 25 **A. We heard what was going on, but I don't**

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02 26 40PM 1 **recall anyone else being ordered to die.**

02 26 43PM 2 **Q.** Whereabouts in the tent were you after

02 26 47PM 3 you were laid down there?

02 26 48PM 4 **A. I was next to a speaker near the middle**

02 26 54PM 5 **of the floor or to the -- when you walked in the**

02 26 58PM 6 **door, walking straight. That area.**

02 27 03PM 7 **Q.** Was there sound coming out of the

02 27 05PM 8 speaker?

02 27 05PM 9 **A. Yes, there was.**

02 27 07PM 10 **Q.** What sort of sound?

02 27 08PM 11 **A. Loud music and the game.**

02 27 12PM 12 **Q.** Was the loud music coming into your ear?

02 27 16PM 13 **A. It was.**

02 27 18PM 14 **Q.** Was that uncomfortable?

02 27 18PM 15 **A. Yes.**

02 27 21PM 16 **Q.** When was it, Ms. Phillips, that your

02 27 25PM 17 experience as being dead came to an end?

02 27 28PM 18 **A. When the game ended, we were allowed to**

02 27 33PM 19 **get up and get our things.**

02 27 35PM 20 **Q.** Do you recall about what time the game

02 27 38PM 21 ended?

02 27 38PM 22 **A. I think it was 10:00 or 11:00 at night.**

02 27 42PM 23 **Q.** And it's your testimony you were dead for

02 27 47PM 24 about five hours?

02 27 48PM 25 **A. Yes.**

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02 27 48PM 1 Q. How did the game come to an end? What
 02 27 52PM 2 did you hear?
 02 27 53PM 3 A. **At that point I wasn't paying attention**
 02 28 00PM 4 **anymore. I was just trying to pay attention to**
 02 28 03PM 5 **myself, to get through the challenge.**
 02 28 04PM 6 Q. Was that difficult?
 02 28 05PM 7 A. **It was.**
 02 28 09PM 8 Q. How were you notified that you could now
 02 28 10PM 9 get up?
 02 28 12PM 10 A. **They told us we could get up.**
 02 28 15PM 11 Q. So that part you heard someone telling
 02 28 16PM 12 you, you could get up?
 02 28 17PM 13 A. **Yes.**
 02 28 18PM 14 Q. What were you told to do then?
 02 28 24PM 15 A. **I was told to grab my bag and my jacket**
 02 28 29PM 16 **and meet the angels, the Dream Team, to take us out**
 02 28 30PM 17 **into the desert.**
 02 28 32PM 18 Q. You knew at that point you were about to
 02 28 34PM 19 embark on your Vision Quest?
 02 28 35PM 20 A. **Yes.**
 02 28 38PM 21 Q. When had you been told about what the
 02 28 40PM 22 Vision Quest exercise was?
 02 28 41PM 23 A. **That morning.**
 02 28 43PM 24 Q. What do you recall Mr. Ray telling you
 02 28 43PM 25 about the Vision Quest? What was the purpose?
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02 28 46PM 1 A. **It's an Indian tradition. When you go**
 02 28 51PM 2 **out on a Vision Quest, you're given the ability to**
 02 28 55PM 3 **be by yourself and to meditate and to get clear and**
 02 29 00PM 4 **to have visions. And that's my understanding.**
 02 29 05PM 5 Q. When were you told that you would be
 02 29 09PM 6 fasting?
 02 29 13PM 7 A. **We were told that day.**
 02 29 14PM 8 Q. How much food, Ms. Phillips, had you had
 02 29 16PM 9 to eat that day before you went out to the desert
 02 29 21PM 10 for your Vision Quest?
 02 29 22PM 11 A. **I had breakfast and very light lunch.**
 02 29 29PM 12 Q. The granola bar that you told us about?
 02 29 27PM 13 A. **Yes.**
 02 29 28PM 14 Q. Did you have anything else in the
 02 29 30PM 15 afternoon?
 02 29 30PM 16 A. **No.**
 02 29 30PM 17 Q. At this seminar was food provided for the
 02 29 35PM 18 3:00 o'clock break?
 02 29 36PM 19 A. **Yes.**
 02 29 38PM 20 Q. Was food provided on that Tuesday?
 02 29 38PM 21 A. **Yes.**
 02 29 40PM 22 Q. Did you get any of that?
 02 29 43PM 23 A. **Breakfast.**
 02 29 41PM 24 Q. What about in the afternoon, say at 3:00?
 02 29 43PM 25 Was food provided to the participants?
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02 29 46PM 1 A. **The participants had dinner.**
 02 29 48PM 2 Q. And in between lunch and dinner, do you
 02 29 51PM 3 know if food was provided?
 02 29 53PM 4 A. **I had brought my own snacks.**
 02 29 55PM 5 Q. Did you, other than that granola bar,
 02 29 59PM 6 have any of your other snacks?
 02 30 01PM 7 A. **Not to my recollection. No.**
 02 30 03PM 8 Q. What were you told about where your
 02 30 07PM 9 location would be for the Vision Quest?
 02 30 09PM 10 A. **We were told that we would be on our own**
 02 30 17PM 11 **and it would be in the desert.**
 02 30 19PM 12 Q. What were you told to do about a spot in
 02 30 23PM 13 the desert where you would be? Were you told to
 02 30 28PM 14 build anything?
 02 30 28PM 15 A. **We were told to build a medicine wheel**
 02 30 32PM 16 **out of rocks and sticks and things that we found.**
 02 30 34PM 17 Q. Did Mr. Ray tell you what the medicine
 02 30 38PM 18 wheel was?
 02 30 37PM 19 A. **It was a sacred wheel.**
 02 30 40PM 20 Q. And what was the -- was it a real wheel?
 02 30 43PM 21 A. **It was a circle.**
 02 30 45PM 22 Q. On the ground?
 02 30 46PM 23 A. **Yes.**
 02 30 48PM 24 Q. How big did Mr. Ray tell you to make your
 02 30 50PM 25 medicine wheel or your circle?
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02 30 52PM 1 A. **Approximately six feet. He said enough**
 02 30 55PM 2 **to lay down and be comfortable in. He didn't**
 02 31 00PM 3 **specify that had it had to be a certain size.**
 02 31 05PM 4 Q. Was there a relationship between how big
 02 31 09PM 5 the circle was and how much space you needed to lie
 02 31 13PM 6 down in?
 02 31 13PM 7 A. **I gathered rocks and sticks and made sure**
 02 31 17PM 8 **I had enough space to walk around and lay down**
 02 31 21PM 9 **comfortably.**
 02 31 22PM 10 Q. How large was the medicine wheel you
 02 31 26PM 11 built?
 02 31 26PM 12 A. **I would say eight feet.**
 02 31 27PM 13 Q. What did Mr. Ray tell you about your
 02 31 29PM 14 obligation to stay inside that circle during the
 02 31 32PM 15 Vision Quest?
 02 31 32PM 16 A. **We were to live with honor and journal**
 02 31 38PM 17 **and stay within our wheel until they came to get**
 02 31 42PM 18 **us.**
 02 31 43PM 19 Q. What about when you needed to use the
 02 31 46PM 20 restroom or a bush? What were you told to do?
 02 31 48PM 21 A. **We were told to take care of our needs**
 02 31 51PM 22 **within the circle.**
 02 31 52PM 23 Q. So if you had to relieve yourself, you
 02 31 54PM 24 had to do it in the circle?
 02 31 56PM 25 A. **Yes.**
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02 31 56PM 1 Q. What about if you needed to defecate?

02 31 59PM 2 A. In the circle.

02 32 01PM 3 Q. What were you supposed to do with the

02 32 02PM 4 human waste?

02 32 07PM 5 A. We were allowed to bring Ziploc bags with

02 32 07PM 6 us.

02 32 08PM 7 Q. To put your waste into the Ziploc bag?

02 32 11PM 8 A. Yes.

02 32 11PM 9 Q. And then what happened to the bag? What

02 32 12PM 10 was supposed to happen to the bag?

02 32 14PM 11 A. We took everything with us that we

02 32 16PM 12 brought into the circle out of the circle when we

02 32 19PM 13 were allowed to leave.

02 32 21PM 14 Q. Did Mr. Ray tell you why you had to stay

02 32 24PM 15 inside the circle including to eliminate?

02 32 27PM 16 A. Because it was a Vision Quest and that

02 32 31PM 17 was the terms.

02 32 35PM 18 Q. Did you have concerns about the Vision

02 32 40PM 19 Quest before you did it?

02 32 41PM 20 A. I wondered what it would be like. I

02 32 48PM 21 wondered what it would be like, and I wondered if I

02 32 58PM 22 could do it.

02 33 02PM 23 Q. Did Mr. Ray tell you about any

02 33 05PM 24 possible -- what did you do about wildlife, for

02 33 08PM 25 example? Was there any discussion of that?

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02 33 10PM 1 A. Well, he had talked about the previous

02 33 15PM 2 year where Megan had a snake come into her circle

02 33 19PM 3 but that she was fine. And he talked about the

02 33 21PM 4 fact that it's a sacred circle and no animal

02 33 24PM 5 crosses the sacred circle and it's our energy. So

02 33 29PM 6 I was working on staying calm and thinking calm,

02 33 33PM 7 good thoughts.

02 33 35PM 8 Q. How long was the Vision Quest for? How

02 33 38PM 9 many hours?

02 33 39PM 10 A. Approximately 36.

02 33 42PM 11 Q. And Mr. Ray had told you that the year

02 33 45PM 12 before a snake had gone into Megan's circle?

02 33 49PM 13 A. Yes.

02 33 49PM 14 Q. Did he say how long that snake stayed

02 33 52PM 15 there for?

02 33 52PM 16 A. If he did, I can't remember.

02 33 56PM 17 Q. Did he see what Megan did about the snake

02 34 02PM 18 in her circle?

02 34 03PM 19 A. She stayed on the other side of her

02 34 05PM 20 circle.

02 34 08PM 21 Q. Were you concerned about the animals out

02 34 11PM 22 there in the dessert?

02 34 11PM 23 A. I was.

02 34 12PM 24 Q. Where was your spot that you were led to?

02 34 20PM 25 A. It was quite close to the parking lot,

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02 34 24PM 1 and it was on a slope. And I could hear other

02 34 28PM 2 people, but I could see no one.

02 34 35PM 3 Q. It was within walking distance?

02 34 37PM 4 A. Yes.

02 34 45PM 5 MR. KELLY: Your Honor, I would agree to 141.

02 34 48PM 6 THE COURT: Exhibit 141 is admitted.

02 34 52PM 7 (Exhibit 141 admitted.)

02 34 52PM 8 Q. BY MS. POLK: Ms. Phillips, I'm going to

02 34 53PM 9 put Exhibit 141 up on the overhead and just ask you

02 34 57PM 10 to tell the jury what this is a photograph of.

02 35 00PM 11 A. It looks like Angel Valley.

02 35 06PM 12 Q. You talked about your spot in the desert

02 35 11PM 13 and being able to see a parking lot?

02 35 13PM 14 A. I could hear the parking lot. I could

02 35 15PM 15 not see a parking lot.

02 35 16PM 16 Q. Looking at this exhibit, do you have a

02 35 19PM 17 sense of what direction from this picture you were

02 35 22PM 18 on your Vision Quest?

02 35 23PM 19 A. I have no idea.

02 35 24PM 20 Q. But you do recall this to be part of the

02 35 28PM 21 valley itself where the events were being held?

02 35 32PM 22 A. Without the dining hall and the tent, it

02 35 38PM 23 looks just like a desert. But the two buildings in

02 35 44PM 24 the background look similar to the other cabins the

02 35 49PM 25 people stayed in.

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02 35 53PM 1 Q. If I zoom in, does that help you orient

02 35 57PM 2 yourself?

02 35 57PM 3 A. That's the sweat lodge.

02 35 59PM 4 Q. Do you have a sense of where your Vision

02 36 01PM 5 Quest was in relationship to the sweat lodge?

02 36 03PM 6 A. It was on the other side of Angel Valley.

02 36 06PM 7 Q. Which would be -- you can point to your

02 36 08PM 8 screen and you can actually draw a line if you just

02 36 13PM 9 run your finger on the screen.

02 36 16PM 10 A. My cabin was up around here. So the

02 36 19PM 11 sweat lodge was here. And they took up -- us up

02 36 24PM 12 here. The dining hall was over here. The Crystal

02 36 27PM 13 Hall was somewhere over here, and the tent was over

02 36 30PM 14 further still.

02 36 31PM 15 Q. And the last thing you said about the

02 36 34PM 16 Crystal Hall, I didn't see the mark you made for

02 36 36PM 17 that. Actually, what you can do is tap the corner

02 36 41PM 18 where it says "color," and that will pick up

02 36 43PM 19 another color.

02 36 45PM 20 Draw where you think the Crystal Hall

02 36 47PM 21 was.

02 36 47PM 22 A. I think the Crystal Hall was around here.

02 36 52PM 23 Q. Where that white line is that you just

02 36 53PM 24 put in?

02 36 53PM 25 A. The tents would be further up and further

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02 36 55PM 1 over to the right.

02 36 56PM 2 Q. Okay. What all did you take with you on

02 37 11PM 3 the Vision Quest?

02 37 11PM 4 A. A compass, a journal, sunblock, a hat,

02 37 11PM 5 Ziploc bags, baby wipes, feminine napkins and, I

02 37 26PM 6 believe, just my bag and the clothes on my back.

02 37 28PM 7 Q. Your sleeping bag?

02 37 32PM 8 A. Yes.

02 37 32PM 9 Q. Did you have a jacket?

02 37 33PM 10 A. Yes.

02 37 33PM 11 Q. And you said just the clothes on your

02 37 36PM 12 back?

02 37 36PM 13 A. Yes.

02 37 37PM 14 Q. Were you told about how to enter and exit

02 37 39PM 15 your circle?

02 37 39PM 16 A. We were.

02 37 40PM 17 Q. What were you told?

02 37 42PM 18 A. To enter the one direction and to leave

02 37 44PM 19 the other. I believe it was east and south. I'm

02 37 47PM 20 not 100 percent certain.

02 37 49PM 21 Q. Did Mr. Ray tell you why you had to enter

02 37 52PM 22 and exit this circle a certain way?

02 37 54PM 23 A. Because it's a sacred wheel and it was

02 37 57PM 24 like a little altar. It was sacred so we had to

02 38 02PM 25 honor it.

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02 38 06PM 1 Q. Earlier you mentioned being taken to the

02 38 10PM 2 graveyard. What is the graveyard?

02 38 14PM 3 A. That was where all the dead were laid

02 38 17PM 4 waiting for the game to finish.

02 38 19PM 5 Q. What time of the night on Tuesday evening

02 38 23PM 6 were you led to the graveyard?

02 38 26PM 7 A. It was still dark. It was dark. I

02 38 31PM 8 believe it was around 10:00.

02 38 32PM 9 Q. Was it outside the tent?

02 38 34PM 10 A. No. The graveyard was inside the tent.

02 38 38PM 11 Q. So the area where the dead had to lay

02 38 41PM 12 down was called the "graveyard" inside the tent?

02 38 44PM 13 A. Yes.

02 38 48PM 14 Q. Were you still under a code of silence,

02 38 53PM 15 then, when you were led off on your Vision Quest?

02 38 56PM 16 A. Yes.

02 38 57PM 17 Q. Did you have hesitation about doing the

02 39 02PM 18 Vision Quest?

02 39 03PM 19 A. I did have some hesitation, but I figured

02 39 11PM 20 it would be okay. Other people had done it.

02 39 18PM 21 Q. And did you want to do it?

02 39 25PM 22 A. I'm not a big camper or sports person,

02 39 28PM 23 but I wanted to have a breakthrough and I wanted to

02 39 32PM 24 have -- I wanted to say that I played full on and I

02 39 32PM 25 had given it my all. I didn't want to quit.

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02 39 36PM 1 Q. You testified that the code of silence --

02 39 42PM 2 did it apply to the entire time of your Vision

02 39 44PM 3 Quest, the entire 36 hours?

02 39 46PM 4 A. Yes.

02 39 46PM 5 Q. Did you break that code of silence?

02 39 48PM 6 A. I did.

02 39 48PM 7 Q. And how?

02 39 49PM 8 A. I started praying out loud before I

02 39 52PM 9 realized what I was doing.

02 39 54PM 10 Q. Why were you praying out loud?

02 39 55PM 11 A. Because I was uncomfortable.

02 39 58PM 12 Q. Were you scared?

02 40 00PM 13 A. Yes.

02 40 01PM 14 Q. And about how long into your Vision Quest

02 40 04PM 15 did you start praying out loud?

02 40 07PM 16 A. After setting up my circle and being

02 40 10PM 17 inside of it, a white mouse ran through my circle.

02 40 15PM 18 And the noises were discomfoting, and I got a

02 40 19PM 19 little worried, and I started praying.

02 40 22PM 20 Q. How did you feel after realizing you had

02 40 25PM 21 spoken out loud?

02 40 28PM 22 A. Well, I thought I'm not going to admit

02 40 29PM 23 this to anyone.

02 40 30PM 24 Q. And why?

02 40 30PM 25 A. Because of laying down on the floor for

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02 40 34PM 1 five hours was the thing for breaking the one rule.

02 40 38PM 2 I didn't want to have something else done.

02 40 41PM 3 Q. Did you speak out loud for the remainder

02 40 44PM 4 of your 36 hours of your Vision Quest?

02 40 46PM 5 A. No, I didn't.

02 40 47PM 6 Q. So the only time was when you

02 40 48PM 7 accidentally prayed out loud?

02 40 50PM 8 A. Yes.

02 40 50PM 9 Q. Did you ever tell your team leader that

02 40 52PM 10 you had spoken out loud in violation of the code of

02 40 55PM 11 silence?

02 40 55PM 12 A. No, I did not.

02 40 58PM 13 MR. KELLY: Excuse me, Judge. May we

02 40 59PM 14 approach?

02 41 17PM 15 (Sidebar conference.)

02 41 17PM 16 MR. KELLY: Your Honor, I'm always in a

02 41 22PM 17 difficult position sitting in front of a jury as to

02 41 25PM 18 whether to stand up and object. Thank you for the

02 41 28PM 19 bench conference.

02 41 31PM 20 In terms of relevance, white mouse,

02 41 33PM 21 praying out loud, sitting in a medicine wheel,

02 41 38PM 22 self-constricted -- I'm having difficulty to

02 41 38PM 23 connect that to the victims when my client is

02 41 41PM 24 charged with manslaughter.

02 41 42PM 25 Is there some way -- somehow this is

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02:41:44PM 1 going to be connected to the three victims? If
02:41:47PM 2 not, I'd move to strike about the last 45 minutes
02:41:50PM 3 of this testimony.

02:41:53PM 4 THE COURT: Your exact objection, Mr. Kelly?

02:41:56PM 5 MR. KELLY: The exact legal objection is
02:42:02PM 6 relevance. How is this relevant to the
02:42:04PM 7 manslaughter case?

02:42:04PM 8 THE COURT: Ms. Polk?

02:42:04PM 9 MS. POLK: Your Honor, clearly this is
02:42:08PM 10 relevant. What subsequent testimony will reveal is
02:42:11PM 11 two of the three victims also did the Samurai Game,
02:42:14PM 12 also did the Vision Quest under the same conditions
02:42:17PM 13 that Ms. Phillips performed those events.

02:42:23PM 14 And the Court has already ruled that the
02:42:25PM 15 state of mind of the victim and the participants is
02:42:28PM 16 relevant. All of this is building up to their
02:42:32PM 17 state of mind when they enter the sweat lodge.

02:42:36PM 18 The Court heard Mr. Li's opening
02:42:38PM 19 statement where he repeatedly talked to them about
02:42:42PM 20 choice and --

02:42:45PM 21 THE COURT: Go ahead.

02:42:48PM 22 MS. POLK: Repeatedly talked to them about
02:42:51PM 23 choice. Clearly what's relevant -- I believe the
02:42:55PM 24 Court has ruled that it's relevant, what are all
02:42:57PM 25 these events, all of these techniques that were

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02:42:59PM 1 used throughout the week to condition the victims
02:43:03PM 2 as well as the participants when entering the sweat
02:43:06PM 3 lodge to abide by Mr. Ray's rules. That is exactly
02:43:09PM 4 the testimony that's coming up through this
02:43:11PM 5 witness.

02:43:11PM 6 MR. KELLY: Is that, then, Judge, a concession
02:43:14PM 7 as to Liz Neuman, who did not participate, that my
02:43:19PM 8 client is not guilty?

02:43:26PM 9 THE COURT: Ms. Phillips was in the sweat
02:43:37PM 10 lodge?

02:43:38PM 11 MS. POLK: Yes.

02:43:41PM 12 THE COURT: Okay. Overruled.

02:44:25PM 13 (End of sidebar conference.)

02:44:25PM 14 Q. MS. POLK: Ms. Phillips, you testified
02:44:27PM 15 that the Vision Quest was 36 hours long. Did you
02:44:30PM 16 get any food during that 36 hours?

02:44:33PM 17 A. No.

02:44:33PM 18 Q. Did you get any water during that
02:44:35PM 19 36 hours?

02:44:36PM 20 A. No.

02:44:36PM 21 Q. For you that period of time was actually
02:44:38PM 22 longer without food or water?

02:44:43PM 23 A. Yes.

02:44:43PM 24 Q. When was the last time you had food
02:44:46PM 25 before entering your Vision Quest?

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02:44:48PM 1 A. That would have been in the afternoon.

02:44:50PM 2 Q. That granola bar?

02:44:52PM 3 A. Yes.

02:44:53PM 4 Q. When was the last time you had water
02:44:55PM 5 before starting your Vision Quest?

02:44:56PM 6 A. Just before laying down.

02:45:01PM 7 Q. Laying down dead at the beginning of the
02:45:03PM 8 code of silence?

02:45:03PM 9 A. Yes.

02:45:04PM 10 Q. What did you do during those 36 hours in
02:45:07PM 11 your circle in the desert?

02:45:08PM 12 A. I slept, I prayed, I journaled. I got up
02:45:19PM 13 and moved around the circle.

02:45:22PM 14 Q. And did you, during that 36 hours, need
02:45:25PM 15 to eliminate?

02:45:25PM 16 A. I did.

02:45:26PM 17 Q. Where did you do it?

02:45:27PM 18 A. At the bottom of the circle. Because I
02:45:30PM 19 was on a hill. So I went down to the bottom.

02:45:35PM 20 Q. When did the Vision Quest end?

02:45:40PM 21 A. Thursday morning.

02:45:42PM 22 Q. How did it end for you?

02:45:43PM 23 A. Somebody came and got me and told me I
02:45:47PM 24 was allowed to dismantle my circle and exit.

02:45:52PM 25 Q. What did you do with your circle?

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02:45:54PM 1 A. I exited and I put the sticks and rocks
02:45:58PM 2 back where I found them or as close to.

02:46:04PM 3 Q. Where did you go from there?

02:46:06PM 4 A. I actually walked very quickly back to
02:46:09PM 5 the cabin and grabbed a granola bar and water and
02:46:13PM 6 went and had a shower.

02:46:15PM 7 Q. Were you still under the code of silence?

02:46:17PM 8 A. Yes.

02:46:18PM 9 Q. What did you do after you showered?

02:46:23PM 10 A. Went back to the cabin and changed and
02:46:27PM 11 went for breakfast.

02:46:28PM 12 Q. About what time was breakfast? We're now
02:46:31PM 13 talking about Thursday, October 8?

02:46:32PM 14 A. We are.

02:46:33PM 15 Q. About what time was breakfast?

02:46:34PM 16 A. I believe it was around 7:30.

02:46:38PM 17 Q. Do you recall what you had for breakfast?

02:46:41PM 18 A. Some oatmeal.

02:46:43PM 19 Q. Were you hungry after all those hours?

02:46:47PM 20 A. I was.

02:46:47PM 21 Q. And were you thirsty?

02:46:48PM 22 A. I was.

02:46:49PM 23 Q. Were you told at some point by Mr. Ray
02:46:52PM 24 that you needed to hydrate?

02:46:54PM 25 A. Yes.

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02:46:55PM 1 Q. When was that?

02:46:55PM 2 A. **When we arrived back at the Crystal Hall**

02:46:58PM 3 **Thursday. He told us to start hydrating again.**

02:47:00PM 4 Q. When did you go to the Crystal Hall on

02:47:00PM 5 Thursday?

02:47:04PM 6 A. **Right after breakfast.**

02:47:08PM 7 Q. Were you still under the code of silence?

02:47:07PM 8 A. **Yes.**

02:47:08PM 9 Q. Was that code of silence lifted?

02:47:10PM 10 A. **It was.**

02:47:10PM 11 Q. And when was that?

02:47:11PM 12 A. **When we entered the Crystal Hall.**

02:47:14PM 13 Q. That was after breakfast?

02:47:16PM 14 A. **Yes.**

02:47:16PM 15 Q. What was the next event that occurred?

02:47:18PM 16 A. **The next event was the sweat lodge.**

02:47:20PM 17 Q. What did you do the rest of the morning

02:47:23PM 18 in the Crystal Hall?

02:47:25PM 19 A. **More lectures and sharing of experiences.**

02:47:28PM 20 Q. How did you share your experiences?

02:47:31PM 21 A. **Those who wanted to share stood up and a**

02:47:34PM 22 **mic was brought.**

02:47:35PM 23 Q. And they shared an experience publicly

02:47:38PM 24 with the other participants?

02:47:39PM 25 A. **Yes.**

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02:47:39PM 1 Q. Did you do that?

02:47:40PM 2 A. **No.**

02:47:45PM 3 Q. You mentioned that the next event was the

02:47:47PM 4 sweat lodge. Did you get lunch that day?

02:47:56PM 5 A. **I wouldn't know unless I conferred with**

02:47:58PM 6 **my notes.**

02:47:58PM 7 Q. Would you do that, please.

02:48:35PM 8 A. **I actually don't see it in my notes. I**

02:48:38PM 9 **don't recall having lunch that day.**

02:48:40PM 10 Q. Do you recall approximately when it was

02:48:42PM 11 that Mr. Ray told the group that you were now going

02:48:45PM 12 to do a sweat lodge?

02:48:46PM 13 A. **It was early afternoon.**

02:48:48PM 14 Q. Where were you when he told you about the

02:48:51PM 15 sweat lodge?

02:48:51PM 16 A. **In the Crystal Hall.**

02:48:53PM 17 Q. Did Mr. Ray tell you about what this

02:48:55PM 18 sweat lodge would be like?

02:48:57PM 19 A. **Yes, he did.**

02:48:58PM 20 Q. What do you recall that he told the

02:48:58PM 21 group?

02:49:04PM 22 A. **That it would be very hot, that he ran a**

02:49:04PM 23 **sweat lodge that was very hot, and it would be**

02:49:15PM 24 **uncomfortable. He told us that we would feel like**

02:49:20PM 25 **we were going to die, but we wouldn't.**

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02:49:27PM 1 Q. Did Mr. Ray talk to you about the purpose

02:49:30PM 2 of a sweat lodge?

02:49:33PM 3 A. **I don't recall so much the purpose,**

02:49:42PM 4 **except that from what I gathered it was entering**

02:49:46PM 5 **the womb. And it was a sacred -- he told us it was**

02:49:50PM 6 **a very sacred, time-honored tradition that went**

02:49:54PM 7 **back a long time.**

02:49:55PM 8 Q. Did Mr. Ray talk about his experience

02:49:58PM 9 running sweat lodges?

02:49:59PM 10 A. **That he had held a number of them in the**

02:50:03PM 11 **past.**

02:50:04PM 12 Q. And did he lead you to believe that it

02:50:08PM 13 was going to be a dangerous experience?

02:50:10PM 14 A. **I was not aware it was going to be**

02:50:14PM 15 **dangerous. I was aware it was going to be a**

02:50:20PM 16 **challenge.**

02:50:21PM 17 Q. Did you want to do the sweat lodge?

02:50:23PM 18 A. **Yes, I did.**

02:50:24PM 19 Q. And why?

02:50:25PM 20 A. **It was the last event of the whole**

02:50:28PM 21 **Spiritual Warrior. It was the culmination. I**

02:50:32PM 22 **wanted to finish what I had started.**

02:50:34PM 23 Q. Did you anticipate having a breakthrough

02:50:37PM 24 in the sweat lodge?

02:50:38PM 25 A. **I did.**

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02:50:39PM 1 Q. And specifically, what did you

02:50:42PM 2 anticipate? What did you think was going to happen

02:50:45PM 3 to you inside the sweat lodge?

02:50:48PM 4 A. **I was hoping for an enlightened moment.**

02:50:52PM 5 Q. Ms. Phillips, when you say you were

02:50:56PM 6 hoping for enlightenment or an enlightening moment,

02:50:59PM 7 did you have an idea of what it would be that you

02:51:02PM 8 would be enlightened about?

02:51:04PM 9 A. **No.**

02:51:04PM 10 Q. What was your understanding of what an

02:51:07PM 11 enlightenment would be?

02:51:10PM 12 A. **We've had a number of them. And I'd had**

02:51:14PM 13 **a number of them through different exercises where**

02:51:18PM 14 **you just become clear on certain things or you go,**

02:51:23PM 15 **a-ha, and things become clear. And that for me is**

02:51:28PM 16 **what enlightenment is.**

02:51:30PM 17 Q. Were you told by Mr. Ray what to wear

02:51:33PM 18 going into the sweat lodge?

02:51:34PM 19 A. **We were allowed to wear shorts or bathing**

02:51:40PM 20 **suits.**

02:51:41PM 21 Q. What about jewelry?

02:51:42PM 22 A. **No jewelry, no makeup.**

02:51:46PM 23 Q. Did Mr. Ray say why no jewelry?

02:51:53PM 24 A. **Because it was going to get extremely**

02:51:56PM 25 **hot.**

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02 51 57PM 1 Q. Were you told anything about pouches?

02 51 59PM 2 A. **We were on our Vision Quest. We were to**

02 52 05PM 3 **pray and to assemble pouches of tobacco as an**

02 52 07PM 4 **offering for the sweat lodge.**

02 52 17PM 5 Q. How many packages of tobacco were you

02 52 18PM 6 supposed to assemble?

02 52 18PM 7 A. **I don't know. Five or seven. There was**

02 52 23PM 8 **a reason for each one.**

02 52 28PM 9 Q. What did each pouch that you were

02 52 30PM 10 assembling -- what was it supposed to represent?

02 52 33PM 11 A. **It was an offering.**

02 52 35PM 12 Q. What does that mean? Or what did it mean

02 52 37PM 13 to you -- an offering?

02 52 38PM 14 A. **It didn't -- I didn't put as much store**

02 52 44PM 15 **in that. And I just assembled the pouches as**

02 52 47PM 16 **instructed.**

02 52 48PM 17 Q. Who gave you the material to assemble

02 52 52PM 18 your pouches?

02 52 56PM 19 A. **We purchased the material and the string**

02 52 58PM 20 **before we went to Arizona.**

02 52 59PM 21 Q. You were told to bring it?

02 53 00PM 22 A. **Yes.**

02 53 00PM 23 Q. Who told you how to assemble your

02 53 03PM 24 pouches?

02 53 04PM 25 A. **Mr. Ray did.**

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02 53 05PM 1 Q. What was used to assemble your pouches?

02 53 07PM 2 A. **They were already cut into squares. And**

02 53 12PM 3 **we had our tobacco and string. We put the tobacco**

02 53 17PM 4 **in, tied it up, and put them on the string.**

02 53 18PM 5 Q. What was the material that was already

02 53 20PM 6 cut?

02 53 21PM 7 A. **I had just purchased so much material and**

02 53 24PM 8 **cut squares.**

02 53 26PM 9 Q. What kind of material?

02 53 27PM 10 A. **Cotton.**

02 53 29PM 11 Q. Fabric?

02 53 31PM 12 A. **Yes.**

02 53 31PM 13 Q. You were told to purchase fabric and cut

02 53 36PM 14 it?

02 53 36PM 15 A. **Yes.**

02 53 36PM 16 Q. You mentioned that Mr. Ray said that you

02 53 53PM 17 would feel like you were going to die but you would

02 53 55PM 18 not. Had Mr. Ray been talking about dying all

02 53 58PM 19 week?

02 53 58PM 20 A. **Yes, he had.**

02 54 00PM 21 Q. And what did you understand when Mr. Ray

02 54 04PM 22 talked about death throughout the week?

02 54 10PM 23 A. **It was a metaphor. And it was a**

02 54 14PM 24 **spiritual death, not a physical death, a death of**

02 54 14PM 25 **ideas, death of things that no longer worked for**

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02 54 18PM 1 **you.**

02 54 19PM 2 Q. Did you believe that anybody was going to

02 54 21PM 3 die as you entered that sweat lodge?

02 54 23PM 4 A. **No.**

02 54 24PM 5 Q. Would you have participated if you

02 54 28PM 6 thought someone was going to die?

02 54 28PM 7 A. **No.**

02 54 30PM 8 Q. Did Mr. Ray in that briefing before you

02 54 33PM 9 went into the sweat lodge talk to you about

02 54 35PM 10 surrendering to death?

02 54 37PM 11 A. **He said you had to surrender to it in**

02 54 41PM 12 **order to survive it.**

02 54 42PM 13 Q. Surrender to what?

02 54 44PM 14 A. **To the heat, to the onslaught of heat and**

02 54 51PM 15 **discomfort.**

02 54 52PM 16 Q. What did that mean to you when Mr. Ray

02 54 55PM 17 said surrender to the heat?

02 54 57PM 18 A. **Don't fight it, don't give up.**

02 55 02PM 19 Q. And what about leaving?

02 55 03PM 20 A. **We were encouraged to stay and to play**

02 55 08PM 21 **full on and to use our mind to rise above it.**

02 55 13PM 22 Q. Did Mr. Ray talk to you about some of the

02 55 16PM 23 symptoms that your body would go through as it got

02 55 19PM 24 hotter inside the sweat lodge?

02 55 21PM 25 A. **He did.**

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02 55 21PM 1 Q. What did he tell you?

02 55 23PM 2 A. **He told us that we would sweat, that we**

02 55 28PM 3 **would feel like our skin was splitting apart. He**

02 55 33PM 4 **told us in the past some people had thrown up, that**

02 55 38PM 5 **we might experience some discomfort.**

02 55 45PM 6 Q. Did Mr. Ray lead you to believe that it

02 55 48PM 7 was okay to ignore those symptoms of your body?

02 55 51PM 8 A. **He told us that we were all**

02 55 56PM 9 **self-responsible. We had to pay attention to our**

02 55 57PM 10 **own bodies.**

02 55 57PM 11 Q. You said he told you to surrender to the

02 56 00PM 12 heat?

02 56 02PM 13 A. **Yes.**

02 56 03PM 14 Q. And what did that mean to you in terms

02 56 05PM 15 of, for example, feeling like your skin was going

02 56 09PM 16 to fall off?

02 56 10PM 17 A. **To me it meant just don't think about it**

02 56 18PM 18 **and to continue and endure.**

02 56 21PM 19 Q. To endure it?

02 56 22PM 20 A. **Yes.**

02 56 22PM 21 Q. Were you allowed to bring water inside

02 56 27PM 22 the sweat lodge?

02 56 28PM 23 A. **No.**

02 56 28PM 24 Q. Do you recall Mr. Ray making any comments

02 56 31PM 25 to you about what Native Americans thought about

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02 56 36PM 1 his sweat lodge?

02 56 37PM 2 MR. KELLY: Your Honor, objection. Relevance.

02 56 41PM 3 THE COURT: Overruled.

02 56 42PM 4 Q. MS. POLK: You can answer.

02 56 48PM 5 A. He told us that other people said that

02 56 51PM 6 his was hotter than the Native American sweat

02 56 51PM 7 lodges.

02 56 56PM 8 Q. Were you told how to enter the sweat

02 56 58PM 9 lodge?

02 56 58PM 10 A. We were told to follow after he entered

02 57 03PM 11 and to walk to the left and walk around or bend

02 57 07PM 12 over. You could bend over or you could crawl.

02 57 10PM 13 Q. Were you told to enter and exit a certain

02 57 14PM 14 way?

02 57 14PM 15 A. Yes.

02 57 14PM 16 Q. What was that?

02 57 15PM 17 A. Enter to the left and then you had to

02 57 21PM 18 come out the same way. So never going back around

02 57 25PM 19 the circle, going the one direction only, not going

02 57 29PM 20 the other direction.

02 57 30PM 21 Q. Did Mr. Ray tell you why?

02 57 32PM 22 A. Because it was sacred.

02 57 38PM 23 Q. Did he tell you that the sweat lodge

02 57 41PM 24 itself was sacred?

02 57 43PM 25 A. Yes, he did.

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02 57 45PM 1 MR. KELLY: Your Honor, may we take a break,

02 57 48PM 2 Judge?

02 57 48PM 3 THE COURT: It's about 90 minutes.

02 57 51PM 4 Ms. Polk, mark your place there.

02 57 55PM 5 Ladies and gentlemen, we'll take the

02 57 55PM 6 afternoon recess. Remember the admonition.

02 58 04PM 7 Ms. Phillips, you will have a break also.

02 58 04PM 8 Remember the rules I mentioned to you earlier. Be

02 58 08PM 9 assembled at 20 after. We'll start as soon as we

02 58 11PM 10 can after that. I'll ask the parties to remain.

02 58 13PM 11 Thank you.

02 58 13PM 12 (Proceedings continued outside presence

02 58 57PM 13 of jury.)

02 58 57PM 14 THE COURT: I'll note the jury has exited.

02 58 59PM 15 Mr. Kelly?

02 59 01PM 16 MR. KELLY: Judge, first of all, may I be

02 59 03PM 17 heard?

02 59 04PM 18 THE COURT: Yes.

02 59 05PM 19 MR. KELLY: Secondly, may the witness be

02 59 07PM 20 excused?

02 59 07PM 21 THE COURT: Yes.

02 59 10PM 22 You may take your break, too,

02 59 10PM 23 Ms. Phillips. You are excused at this time.

02 59 13PM 24 Remember the rule of exclusion. Thank you.

02 59 21PM 25 (The witness leaves the room.)

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02 59 21PM 1 MR. KELLY: Your Honor, I have two significant

02 59 22PM 2 concerns regarding my client's ability to receive a

02 59 26PM 3 fair trial. One is the repeated leading questions

02 59 29PM 4 asked by Ms. Polk on direct examination. It puts

02 59 32PM 5 me in a position of having to object in front of

02 59 35PM 6 the jury and appear to be obstreperous to those

02 59 40PM 7 folks. And I believe that the continued leading

02 59 42PM 8 questions are improper.

02 59 44PM 9 Now, I've been very patient up to this

02 59 46PM 10 point because we've been talking about medicine

02 59 49PM 11 wheels and white lines.

02 59 51PM 12 But now we're going into the sweat lodge

02 59 52PM 13 itself. And I would ask the Court to emphasize to

03 00 00PM 14 Ms. Polk that on direct examination leading

03 00 03PM 15 questions are not permitted.

03 00 05PM 16 Secondly, Judge, Ms. Polk's questions

03 00 08PM 17 when she summarizes the previous answer and then

03 00 12PM 18 asks a question is also improper.

03 00 14PM 19 And, again, Judge, as we enter into the

03 00 17PM 20 sweat lodge portion of this witness's testimony,

03 00 21PM 21 I'd ask that she not be permitted to simply

03 00 24PM 22 summarize the previous answer before asking the

03 00 27PM 23 next question.

03 00 29PM 24 There is supposed to be, as you well

03 00 32PM 25 know, the proper format of direct examination.

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03 00 35PM 1 Thank you.

03 00 35PM 2 THE COURT: Ms. Polk, do you have a comment?

03 00 38PM 3 MS. POLK: Judge, I've been careful. I don't

03 00 42PM 4 believe I'm asking leading questions except in the

03 00 44PM 5 areas where I was just attempting to speed it up a

03 00 47PM 6 little bit. If there is an objection and the Court

03 00 51PM 7 sustains it, obviously I would abide by it.

03 00 54PM 8 THE COURT: It doesn't hurt to have a leading

03 00 58PM 9 type question to get into an area. I don't think

03 00 58PM 10 that's what you're talking about, Mr. Kelly, in any

03 01 02PM 11 way. I'd say, yes, there have been a number of

03 01 06PM 12 leading questions.

03 01 07PM 13 But, again, many of them are appropriate

03 01 09PM 14 just in the context. But just with the alerting,

03 01 17PM 15 there may be objections. And if that happens, that

03 01 20PM 16 happens.

03 01 22PM 17 Mr. Kelly has made his concern known.

03 01 25PM 18 With regard to basically -- I guess Mr. Kelly is

03 01 31PM 19 saying and, in essence, retestifying or just

03 01 36PM 20 repeating an answer. Again, if you have to go back

03 01 42PM 21 and refresh somebody and start on something. But

03 01 48PM 22 if that happens repeatedly, I can see that that

03 01 52PM 23 might be an issue. We'll just trust that both

03 01 56PM 24 attorneys will use appropriate questioning.

03 01 58PM 25 I wanted to bring up -- we have a request

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03 02 12PM 1 from a juror to talk to me. When the jurors
03 02 56PM 2 return, I want to note that a couple of them -- one
03 03 02PM 3 seemed to be trying to talk to another at one
03 03 06PM 4 point. It's reported by the bailiff.

03 03 10PM 5 And I've had this come up before where
03 03 10PM 6 someone gets a question, they don't think they've
03 03 13PM 7 heard something. I just want stress to them, if
03 03 16PM 8 they didn't hear some testimony, the thing to do is
03 03 19PM 9 raise their hand and we can have it repeated.

03 03 22PM 10 I'm suspecting something like that is
03 03 24PM 11 going on. I don't know. I just want to instruct
03 03 26PM 12 them generally. If they can do that, if it's a
03 03 28PM 13 problem in hearing something, raise their hand.
03 03 31PM 14 Let us know that in developing questions.

03 03 35PM 15 I've had this come up too. It's come in
03 03 38PM 16 to a group effort for some reason. There is this
03 03 41PM 17 belief that that's not quite discussing the case.

03 03 44PM 18 But I think if groups are working
03 03 46PM 19 together to come up with questions, that is
03 03 48PM 20 discussing the case. And obviously they can't do
03 03 51PM 21 that. I just wanted to give them kind of a general
03 03 54PM 22 admonition on that.

03 03 56PM 23 Anything else?

03 03 57PM 24 MS. POLK: Judge, I can hear when I'm up there
03 04 01PM 25 that when I'm saying something or the witness is
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03 04 04PM 1 saying something, there was quite a bit of
03 04 06PM 2 coughing.

03 04 07PM 3 I understand if somebody is not hearing
03 04 09PM 4 something because I'm -- and I probably have the
03 04 12PM 5 best position in terms of hearing. But sometimes I
03 04 14PM 6 can't hear or I can see that someone's coughing
03 04 16PM 7 when I'm -- or hear that someone's coughing when
03 04 19PM 8 I'm saying something. And I think there might be
03 04 21PM 9 some issues there.

03 04 22PM 10 THE COURT: And I know when you're conducting
03 04 23PM 11 examination, you got other things you're thinking
03 04 27PM 12 about. If you note that -- because I've noted that
03 04 30PM 13 too. There is quite a bit of coughing going on.
03 04 33PM 14 And that's probably the problem.

03 04 35PM 15 I just want to encourage them that if
03 04 37PM 16 they didn't hear something, it's appropriate to let
03 04 39PM 17 me know and the question can be repeated if it's a
03 04 42PM 18 proper question.

03 04 43PM 19 We'll recess, then.

03 04 45PM 20 Be about 20 minutes or so. Thank you.
03 04 45PM 21 (Recess.)

03 04 45PM 22 (Proceedings continued in the presence of
03 04 45PM 23 jury.)

03 48 49PM 24 THE COURT: The record will show the presence
03 48 50PM 25 of the defendant, Mr. Ray, the attorneys, and the
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03 48 52PM 1 jury. Ms. Phimp is on the witness stand. She
03 48 55PM 2 has previously been sworn.

03 48 57PM 3 Ms. Polk.

03 48 58PM 4 MS. POLK: Thank you, Your Honor.

03 49 01PM 5 Q. Ms. Phillips, after receiving information
03 49 04PM 6 from Mr. Ray about the sweat lodge, what happened
03 49 07PM 7 next?

03 49 08PM 8 A. **We were told to go change and bring our**
03 49 14PM 9 **tobacco pouches and meet at the lodge with our**
03 49 18PM 10 **journals, that we would rip some of the**
03 49 22PM 11 **recapitulations papers into the fire. We were**
03 49 26PM 12 **taken to the front of the tent and "saged."**

03 49 32PM 13 Q. How much time did you have between the
03 49 35PM 14 informational session about the sweat lodge and
03 49 37PM 15 when you were told to be done by the fire?

03 49 40PM 16 A. **15, 20 minutes.**

03 49 42PM 17 Q. And during that time did you change your
03 49 45PM 18 clothes?

03 49 45PM 19 A. **I did.**

03 49 57PM 20 MR. KELLY: Judge, we'd stipulate to 145.

03 50 00PM 21 THE COURT: Exhibit 145 is admitted.

03 50 00PM 22 (Exhibit 145 admitted.)

03 50 15PM 23 Q. BY MS. POLK: Ms. Phillips, I put

03 50 16PM 24 Exhibit 145 up on the overhead.

03 50 18PM 25 Does this scene look familiar to you in
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03 50 21PM 1 terms of a fire and a structure?

03 50 24PM 2 A. **It does.**

03 50 24PM 3 Q. You talked about changing and the meeting
03 50 27PM 4 down at the fire. Is this the fire you met down
03 50 29PM 5 by?

03 50 30PM 6 A. **It is.**

03 50 34PM 7 Q. What happened when you gathered by the
03 50 36PM 8 fire?

03 50 36PM 9 A. **James spoke to us and we threw our papers**
03 50 38PM 10 **onto the fire. And we were saged and led into the**
03 50 40PM 11 **tent.**

03 50 47PM 12 Q. What does it mean that you were "saged"?

03 50 48PM 13 A. **They took burning sage and ran it up our**
03 50 52PM 14 **bodies and down the other side to purify us before**
03 50 55PM 15 **we went into the sweat lodge.**

03 50 57PM 16 Q. They? Who is "they"?

03 50 58PM 17 A. **The Dream Team.**

03 51 00PM 18 Q. And they had a burning bush in their
03 51 04PM 19 hand.

03 51 04PM 20 A. **It looks like a bunch of dried twigs.**
03 51 08PM 21 **And it smokes. So it's not actually burning. I**
03 51 13PM 22 **believe they blow it out after lighting it. And**
03 51 16PM 23 **then the smoke -- you're saged.**

03 51 19PM 24 Q. Did you throw some things into the fire?

03 51 21PM 25 A. **I threw some papers in. Yes.**

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03 51 25PM 1 Q. Some of your writings?

03 51 26PM 2 A. Yes.

03 51 27PM 3 Q. Then you said you entered into this -- to

03 51 28PM 4 that structure. How did you enter?

03 51 29PM 5 A. The mouth of the structure. We -- I

03 51 30PM 6 crawled in and crawled around making my way from

03 51 31PM 7 the left over to the right side.

03 51 32PM 8 Q. Did you feel safe, Ms. Phillips, going

03 51 33PM 9 into that structure?

03 51 34PM 10 A. I did.

03 51 35PM 11 Q. And why?

03 51 36PM 12 A. People had experienced it before, and I

03 51 37PM 13 believed that I would be safe.

03 51 38PM 14 Q. How did you know that people had

03 51 39PM 15 experienced it before?

03 52 01PM 16 A. In previous years they had done the sweat

03 52 02PM 17 lodge.

03 52 03PM 18 MR. KELLY: Your Honor, object as hearsay

03 52 04PM 19 nature.

03 52 05PM 20 THE COURT: Sustained as to foundation.

03 52 06PM 21 Q. BY MS. POLK: Had you been given

03 52 07PM 22 information from somebody about previous sweat

03 52 08PM 23 lodge ceremonies conducted by Mr. Ray?

03 52 09PM 24 A. I had.

03 52 10PM 25 Q. From whom?

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03 52 22PM 1 A. From Jennifer Haley.

03 52 23PM 2 Q. Who is Jennifer?

03 52 24PM 3 A. Jennifer was one of the Dream Team

03 52 25PM 4 members.

03 52 26PM 5 Q. Who entered into that structure first?

03 52 27PM 6 A. I believe Mr. Ray did.

03 52 28PM 7 MR. KELLY: Judge, I would stipulate to 143

03 52 29PM 8 and 144.

03 52 30PM 9 THE COURT: 143 and 144 are admitted.

03 52 31PM 10 (Exhibits 143 and 144 admitted.)

03 52 32PM 11 Q. BY MS. POLK: Ms. Phillips, I have put up

03 52 33PM 12 on the overhead Exhibit 143. Do you recognize

03 52 34PM 13 that?

03 52 35PM 14 A. It looks like the sweat lodge, and it

03 52 36PM 15 looks like participants standing outside.

03 52 37PM 16 Q. Let me put up now Exhibit 144, which is a

03 52 38PM 17 bit closer of a version.

03 52 39PM 18 Do you recognize that photo?

03 52 40PM 19 A. I don't recognize anyone in it at this

03 52 41PM 20 distance.

03 52 42PM 21 Q. Let me zoom in a little bit for you.

03 52 43PM 22 A. Yes.

03 52 44PM 23 Q. What do you recognize?

03 52 45PM 24 A. I recognize a couple of people here as

03 52 46PM 25 being members of our group.

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03 54 03PM 1 Q. See if you can draw on your screen with

03 54 04PM 2 your finger and leave a mark for us to see what you

03 54 05PM 3 just pointed to.

03 54 06PM 4 A. I remember seeing this lady. And I

03 54 07PM 5 believe this is Bill.

03 54 08PM 6 Q. Your team leader?

03 54 09PM 7 A. Yes.

03 54 10PM 8 Q. Do you see yourself in this photograph?

03 54 11PM 9 A. I do not.

03 54 12PM 10 Q. Do you recognize anybody on that side of

03 54 13PM 11 the photograph?

03 54 14PM 12 A. I do not.

03 54 15PM 13 Q. Do you know if this photograph was taken

03 54 16PM 14 before or after the sweat lodge?

03 54 17PM 15 A. It looks as though we're entering.

03 54 18PM 16 Q. And do you recall entering in the manner

03 54 19PM 17 as depicted in this photograph?

03 54 20PM 18 A. Yes.

03 54 21PM 19 Q. Do you know about where in the line you

03 54 22PM 20 were?

03 54 23PM 21 A. Near the front.

03 54 24PM 22 Q. Once you got inside the sweat lodge,

03 54 25PM 23 where did you go?

03 54 26PM 24 A. If the opening of the sweat lodge was

03 54 27PM 25 6:00 o'clock, then I ended up around 3:00 o'clock.

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03 55 21PM 1 MR. KELLY: Judge, I'd stipulate to 415.

03 55 22PM 2 THE COURT: Exhibit 415 is admitted.

03 55 23PM 3 (Exhibit 415 admitted.)

03 55 24PM 4 Q. BY MS. POLK: I'm going to put 415 up on

03 55 25PM 5 the overhead. You just made a comment about if the

03 55 26PM 6 opening was at --

03 55 27PM 7 A. This is where we entered. And if this

03 55 28PM 8 was 6:00 o'clock, I was ending up here.

03 55 29PM 9 Q. And point again where 6:00 o'clock was.

03 55 30PM 10 I didn't see a mark on the screen. 6:00 o'clock is

03 55 31PM 11 the entrance?

03 55 32PM 12 A. Yes.

03 55 33PM 13 Q. How did you get to that position?

03 55 34PM 14 A. We entered and came around.

03 55 35PM 15 Q. How did you feel going into this

03 55 36PM 16 structure?

03 55 37PM 17 A. Nervous, excited.

03 55 38PM 18 Q. Tell the jury what happened once

03 55 39PM 19 everybody got inside.

03 55 40PM 20 A. It was already hot and they started

03 55 41PM 21 bringing the stones in.

03 55 42PM 22 Q. Were there stones already in that pit

03 55 43PM 23 when you entered?

03 55 44PM 24 A. They were not.

03 55 45PM 25 Q. But your testimony is that it was already

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03 56 38PM 1 hot?

03 56 38PM 2 **A. It was.**

03 56 40PM 3 **Q. And were you able to see stones being**

03 56 42PM 4 **brought in?**

03 56 44PM 5 **A. We were.**

03 56 45PM 6 **Q. What did you see? Describe it for the**

03 56 47PM 7 **jury.**

03 56 47PM 8 **A. They brought them in on a shovel or a**

03 56 51PM 9 **pitchfork and put them into the pit.**

03 56 54PM 10 **Q. Who is they?**

03 57 01PM 11 **A. The fire tender. They had a gentleman**

03 57 05PM 12 **who was heating the rocks outside.**

03 57 08PM 13 **Q. Did you see how many rocks were brought**

03 57 10PM 14 **in at the beginning of this?**

03 57 12PM 15 **A. I did not.**

03 57 13PM 16 **Q. What happened? How did you feel when**

03 57 17PM 17 **some hot rocks were brought in?**

03 57 19PM 18 **A. The more rocks that were brought in, the**

03 57 24PM 19 **hotter it got.**

03 57 26PM 20 **Q. Did you hear Mr. Ray say anything about**

03 57 28PM 21 **the number of rocks that were being brought in to**

03 57 31PM 22 **begin his event?**

03 57 32PM 23 **A. He said he normally started with 10 rocks**

03 57 36PM 24 **and he felt good, and he'd start with 12 rocks.**

03 57 40PM 25 **Q. Did Mr. Ray have a name for the rocks?**
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03 57 43PM 1 **A. I believe they were called "grandfather."**

03 57 48PM 2 **Q. Were you instructed by Mr. Ray to say**

03 57 48PM 3 **anything as rocks were brought in?**

03 57 50PM 4 **A. We were to greet the rocks. And I didn't**

03 57 54PM 5 **know if I got it right or not. But I think it was**

03 57 58PM 6 **Yoho, Grandfather, basically, thanking the rocks.**

03 58 02PM 7 **Q. Did you do that when 12 rocks were**

03 58 04PM 8 **brought in?**

03 58 05PM 9 **A. We did.**

03 58 07PM 10 **Q. With those first 12 rocks that were**

03 58 11PM 11 **brought in, then what happened?**

03 58 14PM 12 **A. Then some water was poured over the**

03 58 18PM 13 **rocks. The tent flap was closed and the round**

03 58 21PM 14 **began.**

03 58 22PM 15 **Q. What did you feel when water was poured**

03 58 24PM 16 **over the hot rocks?**

03 58 26PM 17 **A. More heat.**

03 58 27PM 18 **Q. Can you describe for us how hot. Or what**

03 58 31PM 19 **did you feel?**

03 58 32PM 20 **A. It was like a blast of air that would**

03 58 35PM 21 **just come over you.**

03 58 38PM 22 **Q. How did you react to that heat?**

03 58 45PM 23 **A. I don't generally do well with heat. I**

03 58 49PM 24 **had a difficult time. But I had expressed my**

03 58 53PM 25 **concerns to Jennifer earlier. And she said if I**
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03 58 58PM 1 **had issues, I should lift the tent flap and breathe**

03 59 02PM 2 **the air underneath. So immediately I thought I**

03 59 05PM 3 **would just go ahead and do that.**

03 59 07PM 4 **Q. When you say "the tent flap," are you**

03 59 08PM 5 **referring to the opening of the tent?**

03 59 10PM 6 **A. No. I'm referring to the bottom of the**

03 59 12PM 7 **tent.**

03 59 13PM 8 **Q. Could you show us on Exhibit 415 what**

03 59 16PM 9 **you're referring to. And I realize this is just a**

03 59 18PM 10 **circle.**

03 59 19PM 11 **A. It would be the bottom where the tent met**

03 59 23PM 12 **with the ground.**

03 59 24PM 13 **Q. Did you try to do that, to lift the side**

03 59 26PM 14 **of the tent?**

03 59 27PM 15 **A. I did ever so slightly.**

03 59 30PM 16 **Q. What happened?**

03 59 31PM 17 **A. I had cool air.**

03 59 33PM 18 **Q. And you did that when?**

03 59 34PM 19 **A. I did that for Sylvia and myself the**

03 59 38PM 20 **first round and subsequently after on the other**

03 59 42PM 21 **rounds.**

03 59 43PM 22 **Q. How many times would you say,**

03 59 44PM 23 **Ms. Phillips, you lifted the side of this tent to**

03 59 48PM 24 **get air?**

03 59 49PM 25 **A. Maybe 12 times.**
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03 59 53PM 1 **Q. Did you do it from start to finish?**

03 59 55PM 2 **A. Mostly I did.**

04 00 02PM 3 **Q. Do you recall how long that first round**

04 00 05PM 4 **lasted?**

04 00 06PM 5 **A. The time -- it was hard to gauge. We**

04 00 13PM 6 **didn't have watches. But it seemed like it was**

04 00 16PM 7 **five minutes a round.**

04 00 20PM 8 **Q. You talked about your position, and I**

04 00 22PM 9 **think you called it the "2:00 o'clock position" on**

04 00 25PM 10 **the face of a clock?**

04 00 26PM 11 **A. 3:00 o'clock.**

04 00 27PM 12 **Q. Do you recall who at that point was**

04 00 30PM 13 **sitting around you?**

04 00 31PM 14 **A. Sylvia was beside me, and Theresa was**

04 00 40PM 15 **beside me.**

04 00 41PM 16 **Q. Do you recall Sylvia's last name?**

04 00 44PM 17 **A. I do not, although she married Wright,**

04 00 49PM 18 **Richard Wright.**

04 00 52PM 19 **Q. Ms. Phillips, we've used the term**

04 00 56PM 20 **"round." What does that term mean. Will you tell**

04 00 58PM 21 **the jury.**

04 00 59PM 22 **A. Every time the flap was opened and stones**

04 01 01PM 23 **were brought in and then the flap was closed was**

04 01 05PM 24 **another round.**

04 01 06PM 25 **Q. Do you know how many rounds there were**
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04 01 08PM 1 that afternoon?

04 01 09PM 2 **A. I don't know.**

04 01 11PM 3 **Q. Did you stay in the whole time?**

04 01 12PM 4 **A. I did not.**

04 01 22PM 5 **Q. You were next to Sylvia. At some point**
04 01 24PM 6 **did Sylvia leave?**

04 01 24PM 7 **A. She left after the first round.**

04 01 25PM 8 **Q. What about you?**

04 01 26PM 9 **A. I left after the third round, I believe.**

04 01 29PM 10 **Q. And what did you do once you left?**

04 01 32PM 11 **A. I was sprayed down with water. I drank**
04 01 34PM 12 **three glasses of water and electrolytes.**

04 01 38PM 13 **Q. And then what did you do?**

04 01 39PM 14 **A. And then we were encouraged to come back**
04 01 42PM 15 **in the tent and join our warriors and support them.**

04 01 45PM 16 **And I was feeling better so I went back in.**

04 01 47PM 17 **Q. Who encouraged you to go back in?**

04 01 50PM 18 **A. James Ray called from inside to those**
04 01 53PM 19 **outside.**

04 01 54PM 20 **Q. And what did he say?**

04 01 55PM 21 **A. Come on, Warrior. We need you. We need**
04 01 59PM 22 **your support.**

04 02 00PM 23 **Q. Why did that make you feel like you**
04 02 02PM 24 **should go back in?**

04 02 04PM 25 **A. I didn't want to disappoint him or myself**
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04 02 08PM 1 **or let anyone else down.**

04 02 11PM 2 **Q. Ms. Phillips, why would someone be let**
04 02 18PM 3 **down if you chose to stay outside?**

04 02 19PM 4 **MR. KELLY: Your Honor, I'm going to object to**
04 02 21PM 5 **the form of the question.**

04 02 23PM 6 **THE COURT: Sustained.**

04 02 24PM 7 **MS. POLK: I can ask a better question.**

04 02 26PM 8 **Q. Ms. Phillips, why did you feel you were**
04 02 29PM 9 **letting somebody down by choosing to stay outside**
04 02 32PM 10 **as opposed to going back in?**

04 02 33PM 11 **A. I felt that by being in there and**
04 02 38PM 12 **supporting with my energy, then I would be**
04 02 40PM 13 **supporting.**

04 02 42PM 14 **Q. And supporting whom?**

04 02 43PM 15 **A. My fellow warriors.**

04 02 49PM 16 **Q. Did you feel that way all by yourself, or**
04 02 53PM 17 **was that told to you?**

04 02 54PM 18 **A. I felt that way.**

04 02 58PM 19 **Q. When you were outside, you said that**
04 03 01PM 20 **Mr. Ray called out?**

04 03 03PM 21 **A. He did.**

04 03 07PM 22 **Q. Do you know what round approximately**
04 03 07PM 23 **we're talking about now?**

04 03 08PM 24 **A. I believe it was Round 4.**

04 03 12PM 25 **Q. You said you went out after Round 3?**
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04 03 15PM 1 **A. Yes.**

04 03 15PM 2 **Q. How many rounds did you stay out?**

04 03 18PM 3 **A. One round.**

04 03 19PM 4 **Q. Where were you when Mr. Ray called out to**
04 03 23PM 5 **you and others to come back in?**

04 03 24PM 6 **A. I was sitting here.**

04 03 27PM 7 **Q. And where was Mr. Ray when he called out?**

04 03 30PM 8 **A. He was near the tent opening.**

04 03 34PM 9 **Q. Where did Mr. Ray sit during the**
04 03 38PM 10 **ceremony?**

04 03 39PM 11 **A. Exactly here, near the tent opening.**

04 03 42PM 12 **Q. Did he stay there during the entire**
04 03 45PM 13 **event?**

04 03 48PM 14 **A. He did.**

04 03 48PM 15 **Q. The third round, when you went out, had**
04 03 50PM 16 **other participants gone out?**

04 03 52PM 17 **A. Yes, they had.**

04 03 53PM 18 **Q. Do you know approximately how many?**

04 03 55PM 19 **A. I cannot say.**

04 03 57PM 20 **Q. And when you went back in, was that**
04 04 02PM 21 **before or after the fourth round?**

04 04 04PM 22 **A. It was after the fourth round.**

04 04 06PM 23 **Q. Did other people go back in with you at**
04 04 11PM 24 **that time?**

04 04 11PM 25 **A. I don't recall.**
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04 04 12PM 1 **Q. When you went back in, Ms. Phillips, did**
04 04 15PM 2 **you go back to that same 3:00 o'clock position?**

04 04 18PM 3 **A. No. I couldn't. I came back in and sat**
04 04 21PM 4 **here. And the very next round other people left**
04 04 27PM 5 **and spaces opened. And I ended back here close to**
04 04 31PM 6 **where I had started.**

04 04 34PM 7 **Q. When you came back in and sat in this**
04 04 43PM 8 **area, who was next to you there?**

04 04 44PM 9 **A. I believe that Liz was sitting here,**
04 04 52PM 10 **but -- and Sean was somewhere around here.**

04 05 18PM 11 **MR. KELLY: Judge, I believe we need to**
04 05 18PM 12 **correct the record. The previous exhibit was --**

04 05 22PM 13 **MS. POLK: 414.**

04 05 24PM 14 **MR. KELLY: 414.**

04 05 26PM 15 **THE COURT: Thank you.**

04 05 27PM 16 **MR. KELLY: Now 415 is going to be offered. I**
04 05 32PM 17 **would object. Lack of foundation.**

04 05 34PM 18 **MS. POLK: Your Honor, I have not offered it.**

04 05 36PM 19 **THE COURT: The actual exhibit admitted is**
04 05 40PM 20 **what?**

04 05 40PM 21 **MS. POLK: 414.**

04 05 41PM 22 **THE COURT: Thank you.**

04 05 47PM 23 **MS. POLK: May I approach the witness, Your**
04 05 49PM 24 **Honor?**

04 05 49PM 25 **THE COURT: Yes.**
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04 05 52PM 1 Q. BY MS. POLK: Ms. Phillips, I'm going to
 04 05 54PM 2 show you what's been marked Exhibit 415.
 04 05 57PM 3 Can you read what is on that exhibit?
 04 06 00PM 4 A. **Yes, I can.**
 04 06 02PM 5 Q. Do you see your name there?
 04 06 06PM 6 A. **I do.**
 04 06 06PM 7 Q. After you left at the third round and
 04 06 13PM 8 came back in after the fourth round, you indicated
 04 06 16PM 9 on the overhead a position that you took?
 04 06 19PM 10 A. **Yes.**
 04 06 19PM 11 Q. If you were looking at the face of a
 04 06 22PM 12 clock, what number would you assign, or what time
 04 06 25PM 13 would you assign that position?
 04 06 26PM 14 A. **Being that this is 12:00 o'clock?**
 04 06 35PM 15 Q. Yes.
 04 06 36PM 16 A. **Originally I entered and I was around**
 04 06 38PM 17 **8:00 o'clock. And then I moved closer to 11:00.**
 04 06 48PM 18 Q. And if you see your name -- you told us
 04 06 50PM 19 you see your name on 414. Where you see your name,
 04 06 58PM 20 did that accurately reflect where you ended up when
 04 06 58PM 21 you came back in?
 04 06 58PM 22 A. **It looks like between 10:00 and**
 04 07 01PM 23 **11:00 o'clock.**
 04 07 02PM 24 Q. Is that accurate?
 04 07 03PM 25 A. **Yes, it is.**
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04 07 05PM 1 Q. Would you initial for me on this exhibit
 04 07 07PM 2 your name.
 04 07 13PM 3 When you came back in, who do you
 04 07 17PM 4 recall -- when you were at the 10:00 to 11:00
 04 07 19PM 5 position, who do you recall being next to you?
 04 07 21PM 6 A. **I was beside Theresa. And I don't see on**
 04 07 24PM 7 **the chart that Theresa was right beside me.**
 04 07 28PM 8 Q. You mentioned that Liz Neuman -- that you
 04 07 33PM 9 ended up going past her?
 04 07 36PM 10 A. **I did.**
 04 07 46PM 11 Q. Did you stay at that 11:00 position
 04 07 50PM 12 throughout the rest of the ceremony?
 04 07 53PM 13 A. **I did.**
 04 07 54PM 14 Q. And I'm going to hand you Exhibit 415
 04 08 07PM 15 again.
 04 08 08PM 16 Would you -- the name that you just
 04 08 12PM 17 initialed is where you first started out?
 04 08 14PM 18 A. **No, it's not. When I first started out,**
 04 08 18PM 19 **I was near Josh.**
 04 08 23PM 20 Q. Could you write in on Exhibit 415 for me
 04 08 28PM 21 the position when you came back in.
 04 08 32PM 22 If I could orient you, we have
 04 08 35PM 23 12:00 o'clock up at the top of the page. Just
 04 08 37PM 24 write where you were when you came back in the
 04 08 37PM 25 structure.

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04 08 45PM 1 Do you know someone named Kirby Brown?
 04 08 48PM 2 A. **She was attending Spiritual Warrior.**
 04 08 51PM 3 Q. Did you know where Kirby Brown was in
 04 08 58PM 4 that structure?
 04 08 58PM 5 A. **I knew she was close to this area here.**
 04 09 05PM 6 Q. Ms. Phillips, were there rules about when
 04 09 24PM 7 participants could leave or reenter the sweat
 04 09 27PM 8 lodge?
 04 09 28PM 9 A. **When the flap was open.**
 04 09 30PM 10 Q. Whose rule was that?
 04 09 31PM 11 A. **That was stated by Mr. Ray.**
 04 09 38PM 12 Q. And when did that flap open?
 04 09 38PM 13 A. **After a round was completed and more**
 04 09 41PM 14 **rocks were ready to be brought into the pit.**
 04 09 48PM 15 Q. How much time would that flap remain open
 04 09 49PM 16 between rounds and while rocks were being brought
 04 09 52PM 17 in?
 04 09 52PM 18 A. **It seemed like only minutes.**
 04 09 58PM 19 Q. During those minutes, did you observe
 04 10 00PM 20 people leaving?
 04 10 01PM 21 A. **Yes, I did.**
 04 10 02PM 22 Q. Did you also observe people going back
 04 10 05PM 23 in?
 04 10 05PM 24 A. **Yes, I did.**
 04 10 06PM 25 Q. How is it that someone could get hot
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04 10 08PM 1 rocks in that entrance when people were coming and
 04 10 13PM 2 going?
 04 10 13PM 3 A. **I believe they called out that people**
 04 10 15PM 4 **were leaving and coming in.**
 04 10 18PM 5 Q. Approximately how wide, Ms. Phillips, was
 04 10 22PM 6 that entrance to that structure?
 04 10 23PM 7 A. **I don't know. Enough to get one person**
 04 10 32PM 8 **comfortably through.**
 04 10 35PM 9 Q. And you spread your hands out?
 04 10 37PM 10 A. **I did. I don't know how many feet that**
 04 10 40PM 11 **would be. Maybe three feet, four feet.**
 04 10 44PM 12 Q. Can you tell the jury how large the
 04 10 50PM 13 structure itself was, how large the tent was.
 04 10 54PM 14 A. **You could not stand up, but it was quite**
 04 10 57PM 15 **large.**
 04 10 59PM 16 Q. And I'm going to put back up on the
 04 11 02PM 17 overhead Exhibit 145.
 04 11 13PM 18 Are you able to estimate the
 04 11 14PM 19 approximate -- in terms of feet how large this was?
 04 11 18PM 20 A. **No.**
 04 11 18PM 21 Q. Do you know how many people entered the
 04 11 20PM 22 sweat lodge on October 8?
 04 11 22PM 23 A. **I believe it was 60.**
 04 11 25PM 24 Q. Was it crowded inside?
 04 11 28PM 25 A. **It was.**

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04 11 28PM 1 Q. How much space did you have inside?

04 11 31PM 2 A. **I was touching the people next to me.**

04 11 36PM 3 Q. At all times?

04 11 39PM 4 A. **Most of the time.**

04 11 48PM 5 Q. When you left after the third round, did Mr. Ray say anything?

04 11 49PM 7 A. **He did not.**

04 11 50PM 8 Q. When you came back in, did he say anything?

04 11 52PM 9

04 11 53PM 10 A. **Not to me.**

04 11 55PM 11 Q. Did you hear Mr. Ray say things to other people who were leaving between rounds?

04 11 58PM 12

04 12 00PM 13 A. **He was encouraging people that they could do it.**

04 12 05PM 14

04 12 07PM 15 Q. Could do what?

04 12 08PM 16 A. **That they could continue, that they didn't have to leave.**

04 12 10PM 17

04 12 11PM 18 Q. And when you say "encourage," what words do you recall him using?

04 12 14PM 19

04 12 15PM 20 A. **Come on, Warrior. You're more than that. Live impeccably. You can do it.**

04 12 21PM 21

04 12 26PM 22 Q. When did Mr. Ray make those statements?

04 12 28PM 23 A. **During the event. During the sweat lodge.**

04 12 33PM 24

04 12 34PM 25 Q. Did he make those statements to people Mina G Hunt (928) 554-8522

04 12 36PM 1 who were trying to leave?

04 12 37PM 2 A. **He did.**

04 12 38PM 3 Q. About how many occasions? Do you know?

04 12 41PM 4 A. **I couldn't say.**

04 12 47PM 5 Q. What was your feeling about your attitude toward Mr. Ray with regard to your desire to stay inside?

04 12 58PM 6

04 13 02PM 7

04 13 03PM 8 A. **I respected him highly.**

04 13 07PM 9 Q. Do you have a feeling about whether your actions would disappoint him?

04 13 10PM 10

04 13 11PM 11 A. **Yes.**

04 13 12PM 12 Q. And what was that?

04 13 14PM 13 A. **I didn't want to disappoint either him, the Dream Team or myself.**

04 13 17PM 14

04 13 19PM 15 Q. Why, Ms. Phillips, did you care about whether or not you would disappoint Mr. Ray?

04 13 23PM 16

04 13 26PM 17 A. **That I don't know except that I had admired and believed in what he taught, and I wanted to do the best. I didn't want to quit. I didn't want to give up.**

04 13 32PM 18

04 13 37PM 19

04 13 43PM 20

04 13 53PM 21 Q. When you went back into that tent after the fourth round, did you get a chance to observe the other participants?

04 14 03PM 22

04 14 04PM 23

04 14 04PM 24 A. **I did.**

04 14 04PM 25 Q. Tell the jury what you observed. Mina G Hunt (928) 554-8522

04 14 07PM 1 A. **A lot of people seemed out of it.**

04 14 09PM 2 Q. What do you mean by that they "seemed out of it"?

04 14 12PM 3

04 14 14PM 4 A. **A lot of moaning, people lying down, some delirium, confusion.**

04 14 21PM 5

04 14 28PM 6 Q. That was apparent to you?

04 14 29PM 7 A. **It was.**

04 14 31PM 8 MR. KELLY: Judge, again, there is foundational concerns.

04 14 38PM 9

04 14 45PM 10 THE COURT: Overruled on that question. It's been answered.

04 14 49PM 11

04 14 53PM 12 Q. BY MS. POLK: How did you respond to what you were observing after the fourth round?

04 14 55PM 13

04 14 58PM 14 A. **Well, I moved over to the 10:00, 11:00 o'clock position because there was more room. I mentioned several times that I thought people were having issues and needed help to leave and they didn't wish to leave.**

04 15 07PM 15

04 15 13PM 16

04 15 16PM 17

04 15 19PM 18

04 15 20PM 19 Q. Why did you mention that?

04 15 21PM 20 A. **Because I could hear a snorting breath sound from -- it was Kirby I later found out.**

04 15 27PM 21

04 15 32PM 22 Q. When was it that you said that you mentioned that people were having trouble?

04 15 39PM 23

04 15 42PM 24 A. **I don't know what round it was. But I mentioned several times that the person was having**

04 15 50PM 25 Mina G Hunt (928) 554-8522

04 15 54PM 1 **problems breathing and the person beside them said, I'm here. It's fine. She's all right. And I trusted that.**

04 15 58PM 2

04 16 02PM 3

04 16 03PM 4 Q. Do you know someone named Lou Caci?

04 16 07PM 5 A. **I do.**

04 16 08PM 6 Q. When you went back in after the fourth round, did you become aware of Lou and where he was?

04 16 10PM 7

04 16 13PM 8

04 16 13PM 9 A. **I knew he was -- I knew he was around the 9:00, 10:00 o'clock mark, but I didn't know exactly where he was.**

04 16 23PM 10

04 16 28PM 11

04 16 34PM 12 Q. Did something call your attention to Lou in particular?

04 16 38PM 13

04 16 39PM 14 A. **It did.**

04 16 39PM 15

04 16 40PM 16 Q. When was that?

04 16 41PM 17 A. **He fell into the fire pit.**

04 16 43PM 18

04 16 45PM 19 Q. Do you know when that was?

04 16 51PM 20 A. **It was sometime after the fourth round but well before the ending of the ceremony.**

04 16 54PM 21

04 16 56PM 22 Q. How did you become aware of that?

04 16 58PM 23 A. **A blood-curdling scream.**

04 17 00PM 24

04 17 05PM 25 Q. From?

04 17 05PM 26 A. **From Lou.**

04 17 05PM 27 Q. What else did you observe or hear?

04 17 05PM 28 A. **They helped Lou leave the tent.** Mina G Hunt (928) 554-8522

04 17 10PM 1 Q. Who is "they"?

04 17 11PM 2 A. **The other warriors and sweat lodge**

04 17 13PM 3 **participants.**

04 17 14PM 4 Q. How did you know that Lou was the source

04 17 20PM 5 of that blood-curdling scream?

04 17 23PM 6 A. **I watched him go by me out of the tent.**

04 17 23PM 7 Q. Before or after the scream?

04 17 25PM 8 A. **After the scream.**

04 17 28PM 9 Q. You said that he fell into the fire pit.

04 17 31PM 10 Was there, by the way, fire inside the pit?

04 17 33PM 11 A. **No.**

04 17 34PM 12 Q. How do you know that he -- that Lou fell

04 17 38PM 13 into the pit?

04 17 39PM 14 A. **You heard the scream and he was holding**

04 17 47PM 15 **his arm.**

04 17 51PM 16 Q. Was the flap opened or closed -- the

04 17 54PM 17 opening.

04 17 54PM 18 A. **I don't know.**

04 17 58PM 19 Q. But you could see?

04 17 57PM 20 A. **You could see dimly. It was not**

04 18 01PM 21 **completely black.**

04 18 02PM 22 Q. All the time or just when this incident

04 18 06PM 23 with Lou happened?

04 18 08PM 24 A. **When the tent flap was down, you could**

04 18 10PM 25 **just barely see.**

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04 18 11PM 1 Q. What happened after Lou was -- well, when

04 18 16PM 2 you heard this scream, you learned that Lou had

04 18 20PM 3 fallen into the pit. Did Mr. Ray say anything?

04 18 24PM 4 A. **I don't believe he said something at that**

04 18 26PM 5 **moment. But later on, he told Lou that he'd have a**

04 18 30PM 6 **good moment from -- a good memento, a reminder, of**

04 18 39PM 7 **what he had gone through.**

04 18 40PM 8 Q. You were there when Mr. Ray made that

04 18 43PM 9 statement?

04 18 43PM 10 A. **I was.**

04 18 45PM 11 Q. When Lou fell into the pit and he had the

04 18 49PM 12 blood-curdling scream, did you see Mr. Ray react?

04 18 53PM 13 A. **I did not.**

04 18 54PM 14 Q. Did Mr. Ray stop the ceremony?

04 19 01PM 15 A. **He did not.**

04 19 03PM 16 Q. Were more rocks continued to be brought

04 19 06PM 17 into the structure?

04 19 07PM 18 A. **They were.**

04 19 10PM 19 Q. With each time that rocks were brought

04 19 13PM 20 in, was more water put on the rocks?

04 19 16PM 21 A. **Yes.**

04 19 18PM 22 Q. How were you feeling?

04 19 18PM 23 A. **Hot, baked, tired.**

04 19 25PM 24 Q. Did you get hotter as time went by?

04 19 31PM 25 A. **Yes.**

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04 19 31PM 1 Q. You mentioned earlier that you were

04 19 37PM 2 lifting the side of the tent to get air?

04 19 39PM 3 A. **Yes.**

04 19 40PM 4 Q. How was it that you were able to do that,

04 19 42PM 5 Ms. Phillips?

04 19 44PM 6 A. **I laid on my stomach and put my face on**

04 19 46PM 7 **the ground, my cheek on the ground, and lifted it**

04 19 48PM 8 **ever so slightly so I didn't let the light in but I**

04 19 53PM 9 **got some cool breeze.**

04 19 54PM 10 Q. How did you know that you could do that?

04 19 56PM 11 A. **I had spoken with my friend Jennifer.**

04 20 01PM 12 Q. Did Mr. Ray tell you that you could lift

04 20 04PM 13 the edge of the tent?

04 20 06PM 14 A. **No.**

04 20 07PM 15 Q. Did you feel that you were violating any

04 20 09PM 16 rules in doing that?

04 20 11PM 17 A. **Yes. And I chose to do it anyway.**

04 20 16PM 18 Q. Why?

04 20 16PM 19 A. **After my experience with laying on the**

04 20 21PM 20 **floor, I developed more of an attitude of looking**

04 20 25PM 21 **out after myself.**

04 20 28PM 22 Q. What about living impeccably and with

04 20 33PM 23 honor?

04 20 34PM 24 A. **I believed that I was still being**

04 20 36PM 25 **honorable by taking care of myself.**

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04 20 40PM 1 Q. Why did you not just go out, leave the

04 20 43PM 2 structure?

04 20 44PM 3 A. **I wanted to finish it. I wanted to**

04 20 49PM 4 **finish the entire course.**

04 21 01PM 5 Q. You mentioned Kirby Brown. Did you get

04 21 05PM 6 to know Kirby Brown during the Spiritual

04 21 08PM 7 Warrior 2009 seminar?

04 21 09PM 8 A. **I was able to speak with her on a number**

04 21 12PM 9 **of occasions during the week.**

04 21 14PM 10 Q. You didn't room with her?

04 21 16PM 11 A. **No, I did not.**

04 21 17PM 12 Q. But you could identify her in a

04 21 19PM 13 photograph, for example?

04 21 20PM 14 A. **Yes.**

04 21 21PM 15 Q. You marked on this exhibit for us and I

04 21 31PM 16 cleared it. Mark again for the jury, would you,

04 21 34PM 17 where -- after you went in after Round 4 where you

04 21 38PM 18 were and where you believe Kirby was.

04 21 40PM 19 A. **I ended up here at first. Round about**

04 21 45PM 20 **here. And I believe that Kirby was around here.**

04 21 48PM 21 Q. You told the jury already that you became

04 21 52PM 22 aware of Kirby. Did you ever hear Kirby say

04 21 57PM 23 anything?

04 21 57PM 24 A. **I believe it was her who was rocking back**

04 22 01PM 25 **and forth saying, we can do it, we can do it, we**

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04 22 05PM **1 can do it, over and over again.**

04 22 08PM **2 Q.** When did you become aware of Kirby

04 22 08PM **3 rocking and saying, we can do it?**

04 22 11PM **4 A. After I had moved here.**

04 22 15PM **5 Q.** Can you give us an estimate of what round

04 22 15PM **6 that would be.**

04 22 17PM **7 A. I would guess Round 8. I don't know. I**

04 22 24PM **8 don't know how many rounds in total. They blurred**

04 22 28PM **9 together.**

04 22 28PM **10 Q.** How -- in terms of beginning, middle, and

04 22 31PM **11 end of Mr. Ray's ceremony, at what point from**

04 22 36PM **12 beginning to middle to end was it that you became**

04 22 38PM **13 aware of Kirby rocking?**

04 22 40PM **14 A. It was close to the end.**

04 22 43PM **15 Q.** Did you hear other people react to Kirby

04 22 47PM **16 saying that?**

04 22 48PM **17 A. They yelled at her to stop.**

04 22 50PM **18 Q.** Did you yell?

04 22 51PM **19 A. No.**

04 22 52PM **20 Q.** Who yelled?

04 22 53PM **21 A. Other people, the other warriors.**

04 22 57PM **22 Q.** How did you know that it was Kirby

04 23 01PM **23 rocking and saying, we can do it?**

04 23 02PM **24 A. I looked over and saw that Sidney and**

04 23 05PM **25 Kirby were sitting together.**

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04 23 08PM **1 Q.** Will you draw on this exhibit on the

04 23 11PM **2 overhead where you believe Sidney -- do you know**

04 23 16PM **3 Sidney's last name?**

04 23 17PM **4 A. I don't recall it.**

04 23 18PM **5 Q.** Will you draw where you believe she was

04 23 21PM **6 sitting in the sweat lodge.**

04 23 25PM **7 A. Right here. Right beside her.**

04 23 32PM **8 Q.** And just to --

04 23 35PM **9 A. It's showing forward, but I want it to be**

04 23 38PM **10 back.**

04 23 38PM **11 Q.** If you just hit once. Hit once "Undo."

04 23 45PM **12 It'll undo the last mark you made.**

04 23 56PM **13 A. They were close to the edge of the circle**

04 23 58PM **14 and they were side by side.**

04 24 00PM **15 Q.** And what did you observe about Sidney?

04 24 03PM **16 A. That she was leaning scrunched down**

04 24 08PM **17 against the tent.**

04 24 11PM **18 Q.** Sidney was?

04 24 12PM **19 A. Yes.**

04 24 13PM **20 Q.** You mentioned hearing breathing. When

04 24 17PM **21 was that?**

04 24 21PM **22 A. That was after the we can do it, we can**

04 24 21PM **23 do it, we can do it.**

04 24 22PM **24 Q.** Describe the breathing that you heard.

04 24 24PM **25 A. It sounded like a gurgling, snorting**

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04 24 28PM **1 breath.**

04 24 30PM **2 Q.** Do you know who was making that sound?

04 24 32PM **3 A. I thought and believed at the time that**

04 24 35PM **4 was Kirby.**

04 24 37PM **5 Q.** Ask why -- why do you believe it was

04 24 38PM **6 Kirby?**

04 24 40PM **7 A. Because she had been deliriously rocking**

04 24 43PM **8 back and forth and saying that, and I had looked**

04 24 45PM **9 over. It was hard to see clearly, but after the**

04 24 51PM **10 event, then I was convinced that I was correct.**

04 24 58PM **11 Q.** You just used the term that Kirby was

04 25 02PM **12 "deliriously rocking." Describe for the jury what**

04 25 08PM **13 it is you observed about Kirby that made you use**

04 25 09PM **14 that word "delirious."**

04 25 10PM **15 A. I think that most people who are rocking**

04 25 12PM **16 back and forth saying a statement over and over are**

04 25 15PM **17 not in their right mind. They're not in their**

04 25 20PM **18 right frame of mind.**

04 25 21PM **19 Q.** What did you do, Ms. Phillips, when you

04 25 25PM **20 became aware of Kirby rocking and, in your words,**

04 25 28PM **21 "delirious"?**

04 25 28PM **22 A. I did nothing.**

04 25 31PM **23 Q.** Do you know why?

04 25 32PM **24 A. I felt that if there was real danger, the**

04 25 41PM **25 Dream Team members who were stationed at the north,**

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04 25 44PM **1 south, east and west would come help us. And I**

04 25 48PM **2 trusted the person who said -- beside her that said**

04 25 51PM **3 she was okay.**

04 25 52PM **4 Q.** You said somebody called out. Do you

04 25 57PM **5 know who it was that called out?**

04 26 01PM **6 A. Called out when?**

04 26 03PM **7 Q.** Did you hear anybody express verbally out

04 26 08PM **8 loud concern about Kirby?**

04 26 09PM **9 A. I said five or six times, there is**

04 26 11PM **10 something wrong. She needs to be taken out.**

04 26 14PM **11 Q.** How loud did you say that, Ms. Phillips?

04 26 17PM **12 A. Quite loudly.**

04 26 21PM **13 Q.** Is that from your position over here?

04 26 24PM **14 A. Yes.**

04 26 27PM **15 Q.** Over what period of time did you say

04 26 30PM **16 there is something wrong? She needs to be taken**

04 26 32PM **17 out?**

04 26 32PM **18 A. I believe it was two rounds.**

04 26 37PM **19 Q.** And, again, if we're talking beginning,

04 26 38PM **20 middle or end of Mr. Ray's ceremony, when was it**

04 26 43PM **21 that you were calling out?**

04 26 44PM **22 A. Close to the end.**

04 26 45PM **23 Q.** Why did you call out?

04 26 47PM **24 A. I was concerned.**

04 26 51PM **25 Q.** Who did you call out to?

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04 26 54PM 1 **A. The general people. I called out to**
 04 26 59PM 2 **everyone there.**
 04 27 00PM 3 **Q. How loud of a voice did you use?**
 04 27 01PM 4 **A. I can make myself be heard. I have a**
 04 27 06PM 5 **loud voice. It was quite loud.**
 04 27 14PM 6 **Q. Did you -- describe for the jury what**
 04 27 17PM 7 **your mental state was at the time that you called**
 04 27 18PM 8 **out.**
 04 27 27PM 9 **A. I believe that I was very hot, very**
 04 27 32PM 10 **uncomfortable and somewhat distressed and**
 04 27 37PM 11 **determined to continue on.**
 04 27 41PM 12 **Q. Had you been getting air from this side**
 04 27 43PM 13 **of the tent?**
 04 27 44PM 14 **A. Yes, I had.**
 04 27 50PM 15 **Q. Did you call out with your concern about**
 04 27 52PM 16 **Kirby so that Mr. Ray could hear you?**
 04 27 54PM 17 **A. Yes.**
 04 27 57PM 18 **Q. Did Mr. Ray respond?**
 04 28 00PM 19 **A. Not to my recollection. No.**
 04 28 03PM 20 **Q. For the five or six times that you called**
 04 28 07PM 21 **out, how loud each time did you call out?**
 04 28 08PM 22 **A. Same volume.**
 04 28 11PM 23 **Q. For Mr. Ray to hear?**
 04 28 13PM 24 **A. I'm sorry?**
 04 28 13PM 25 **MR. KELLY: Your Honor, I'm going to object.**
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04 28 15PM 1 **Form of the question, cumulative.**
 04 28 17PM 2 **THE COURT: I'll sustain as to the form of the**
 04 28 23PM 3 **question but not as to cumulative.**
 04 28 29PM 4 **Q. BY MS. POLK: When you called out, who**
 04 28 31PM 5 **did you intend to hear you?**
 04 28 32PM 6 **MR. KELLY: Objection, Judge. That's been**
 04 28 34PM 7 **asked and answered.**
 04 28 34PM 8 **THE COURT: Overruled.**
 04 28 37PM 9 **THE WITNESS: I had intended those who could**
 04 28 40PM 10 **help to hear me.**
 04 28 43PM 11 **Q. BY MS. POLK: You said that somebody**
 04 28 46PM 12 **responded what?**
 04 28 49PM 13 **A. She's fine.**
 04 28 50PM 14 **Q. Do you know who that was?**
 04 28 52PM 15 **A. I don't know.**
 04 28 58PM 16 **Q. Did you do anything further with respect**
 04 29 00PM 17 **to Kirby Brown?**
 04 29 01PM 18 **A. No, I did not.**
 04 29 03PM 19 **Q. Were you aware of anybody else paying**
 04 29 05PM 20 **attention to Kirby Brown after you called out?**
 04 29 08PM 21 **A. Theresa told the people beside her to**
 04 29 16PM 22 **roll her on her side so she could breathe easier.**
 04 29 18PM 23 **Q. Do you know if that happened?**
 04 29 21PM 24 **A. She was on her side slumped over.**
 04 29 21PM 25 **Q. When did you see that?**
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04 29 23PM 1 **A. Near the end before we left.**
 04 29 28PM 2 **Q. Did you still hear breathing?**
 04 29 31PM 3 **A. I didn't hear the snorting anymore.**
 04 29 34PM 4 **Q. Do you know when it was that you stopped**
 04 29 38PM 5 **hearing the snorting?**
 04 29 37PM 6 **A. No, I don't.**
 04 29 38PM 7 **Q. When you stopped hearing what you**
 04 29 40PM 8 **described as snorting, did you hear any breathing**
 04 29 43PM 9 **at all coming from Kirby Brown?**
 04 29 45PM 10 **A. I couldn't say if I heard any breathing**
 04 29 46PM 11 **coming from her or not. It was still very dark and**
 04 30 00PM 12 **there was a lot of people breathing heavily.**
 04 30 08PM 13 **Q. Do you know if anybody passed out inside**
 04 30 15PM 14 **the sweat lodge?**
 04 30 18PM 15 **A. On several occasions somebody would say**
 04 30 20PM 16 **somebody is passed out, and they would drag them**
 04 30 23PM 17 **outside.**
 04 30 24PM 18 **Q. Who would drag them outside?**
 04 30 27PM 19 **A. The other team members, the other**
 04 30 29PM 20 **warriors.**
 04 30 29PM 21 **Q. Did anybody drag Kirby outside?**
 04 30 32PM 22 **A. At the end. Not before the end.**
 04 30 36PM 23 **Q. Is it your testimony other people were**
 04 30 42PM 24 **being dragged out?**
 04 30 43PM 25 **A. Yes.**
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04 30 44PM 1 **Q. When people got dragged out, how did they**
 04 30 47PM 2 **get dragged out?**
 04 30 48PM 3 **A. Around and out.**
 04 30 53PM 4 **Q. Show the jury where Mr. Ray was seated as**
 04 30 57PM 5 **people got dragged out. Can you tell us,**
 04 31 00PM 6 **Ms. Phillips, how many people got dragged out?**
 04 31 03PM 7 **A. No, I can't.**
 04 31 08PM 8 **Q. Do you know somebody -- did you know**
 04 31 18PM 9 **James Shore?**
 04 31 19PM 10 **A. I had met him. Yes.**
 04 31 20PM 11 **Q. Did you know where James Shore was inside**
 04 31 24PM 12 **this structure?**
 04 31 25PM 13 **A. I believe he was beside the two ladies,**
 04 31 28PM 14 **Kirby and Sidney, just on the other side.**
 04 31 31PM 15 **Q. Were you aware of James Shore during**
 04 31 33PM 16 **this -- Mr. Ray's ceremony?**
 04 31 37PM 17 **A. No.**
 04 31 38PM 18 **Q. Did you ever become aware of Mr. Shore**
 04 31 40PM 19 **during the ceremony?**
 04 31 42PM 20 **A. I believe that he tried to scoot out the**
 04 31 47PM 21 **back.**
 04 31 48PM 22 **Q. Why do you believe that?**
 04 31 50PM 23 **A. Because that was the area where we saw**
 04 31 52PM 24 **light come from, but I don't know for sure who, in**
 04 31 57PM 25 **fact, tried to do that.**
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04 31 58PM 1 Q. Let's talk about the light. When was it
 04 32 03PM 2 that you saw light coming from the back of the
 04 32 05PM 3 tent?
 04 32 06PM 4 A. **Somebody lifted the tent to crawl out the**
 04 32 12PM 5 **back and so light spilled inside of the sweat**
 04 32 12PM 6 **lodge.**
 04 32 12PM 7 Q. When did that happen?
 04 32 14PM 8 A. **Close to the end.**
 04 32 16PM 9 Q. Can you point on this chart. Let's see
 04 32 22PM 10 if we can get you another color. Point on the
 04 32 25PM 11 chart the area that the light came from. When you
 04 32 30PM 12 say "toward the end," do you know how close to the
 04 32 33PM 13 end?
 04 32 34PM 14 A. **If it were 10 rounds, I would say around**
 04 32 38PM 15 **Round 8; if there were 12 rounds, round 10.**
 04 32 41PM 16 Q. In relationship to when Kirby was making
 04 32 46PM 17 some breathing noises and then stopped making
 04 32 49PM 18 breathing noises, can you tell us when this issue
 04 32 52PM 19 with the light happened.
 04 32 54PM 20 A. **I can't recall which came first.**
 04 32 57PM 21 Q. You just testified that somebody lifted
 04 33 00PM 22 the flap to climb out?
 04 33 03PM 23 A. **Yes.**
 04 33 04PM 24 Q. How do you know that the person's
 04 33 06PM 25 intention was to crawl out?

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04 33 08PM 1 A. **Well, we heard Mr. Ray say, hey, and --**
 04 33 16PM 2 **you know -- don't do that. This is dishonorable.**
 04 33 20PM 3 **This is sacred. And we heard the people outside**
 04 33 23PM 4 **saying, no, no. You can't come out this way.**
 04 33 31PM 5 Q. Do you know if anybody crawled out?
 04 33 34PM 6 A. **I do not know.**
 04 33 46PM 7 Q. You've talked a couple of different times
 04 33 49PM 8 about Dream Team members helping people.
 04 33 51PM 9 Were you told by somebody that Dream Team
 04 33 54PM 10 members were there to help you inside the sweat
 04 33 58PM 11 lodge?
 04 33 59PM 12 A. **They were there to help us the entire**
 04 34 03PM 13 **week.**
 04 34 03PM 14 Q. And what about specifically inside that
 04 34 07PM 15 structure?
 04 34 07PM 16 A. **They were posted in the north, south,**
 04 34 09PM 17 **east, and west, and they were there to support us**
 04 34 11PM 18 **and help us.**
 04 34 12PM 19 Q. Who told you that?
 04 34 13PM 20 A. **Mr. Ray.**
 04 34 14PM 21 Q. When did he tell you that?
 04 34 17PM 22 A. **Before we went in.**
 04 34 21PM 23 Q. Do you know Liz -- did you know Liz
 04 34 22PM 24 Neuman?
 04 34 22PM 25 A. **I had met her.**

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04 34 23PM 1 Q. And tell the jury. Was she a Dream Team
 04 34 27PM 2 member?
 04 34 27PM 3 A. **She was.**
 04 34 27PM 4 Q. Now that we have -- let's get another
 04 34 32PM 5 color. Show the jury where you believe she was
 04 34 35PM 6 inside this tent.
 04 34 42PM 7 Did you ever hear Mr. Ray give any
 04 34 44PM 8 direction to the Dream Team members about their --
 04 34 47PM 9 his expectations of them inside the structure?
 04 34 50PM 10 A. **I did not hear that.**
 04 34 51PM 11 Q. How were you feeling, Ms. Phillips,
 04 34 57PM 12 toward the end of Mr. Ray's ceremony?
 04 35 00PM 13 A. **Exhausted and completely overheated.**
 04 35 08PM 14 Q. How did it come to an end?
 04 35 13PM 15 A. **It was announced that the ceremony was**
 04 35 16PM 16 **over and we could start exiting.**
 04 35 19PM 17 Q. Who announced that?
 04 35 21PM 18 A. **I believe it was Mr. Ray.**
 04 35 24PM 19 Q. How -- did he ever give you instruction
 04 35 28PM 20 about how to leave once it was over?
 04 35 30PM 21 A. **We had been given instructions at the**
 04 35 33PM 22 **beginning to always leave coming through the circle**
 04 35 36PM 23 **going the correct way.**
 04 35 40PM 24 Q. You talked earlier about your tobacco
 04 35 43PM 25 pouches?

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04 35 44PM 1 A. **Yes.**
 04 35 44PM 2 Q. Did you take them inside this tent with
 04 35 46PM 3 you?
 04 35 46PM 4 A. **We did.**
 04 35 47PM 5 Q. What did you do with them once inside?
 04 35 49PM 6 A. **We hung them on the twigs inside.**
 04 35 52PM 7 Q. Who told you to do that?
 04 35 53PM 8 A. **Mr. Ray.**
 04 35 54PM 9 Q. What were you supposed to do with those
 04 35 57PM 10 pouches when the ceremony was over?
 04 35 59PM 11 A. **I believe we were supposed to throw them**
 04 36 01PM 12 **in the fire. But I don't recall doing anything**
 04 36 03PM 13 **with my pouch.**
 04 36 04PM 14 Q. When you learned that this ceremony was
 04 36 07PM 15 over, what did you do?
 04 36 08PM 16 A. **I exited and then I was hosed off.**
 04 36 13PM 17 Q. Did you have trouble getting out?
 04 36 15PM 18 A. **I crawled out.**
 04 36 18PM 19 Q. Did you -- was it difficult for you?
 04 36 20PM 20 A. **It was not difficult. It wasn't as easy**
 04 36 26PM 21 **as going in.**
 04 36 29PM 22 Q. Did you pass other participants as you
 04 36 32PM 23 were going out?
 04 36 32PM 24 A. **No, I did not.**
 04 36 33PM 25 Q. How long did it take you to get out?

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04 36 35PM 1 **A. It seemed like a very long time, but I'm**
 04 36 41PM 2 **sure it was only minutes.**
 04 36 46PM 3 **Q. Who was the first person out of that**
 04 36 50PM 4 **tent?**
 04 36 54PM 5 **A. I do not know.**
 04 36 58PM 6 **Q. Once you got outside, were you able to**
 04 37 02PM 7 **walk?**
 04 37 06PM 8 **A. I sat down for a long time and was hosed**
 04 37 10PM 9 **off and cooled off.**
 04 37 14PM 10 **Q. Where did you sit down?**
 04 37 18PM 11 **A. They had a tarp outside of the tent and a**
 04 37 22PM 12 **hose. And we sat on the tarp.**
 04 37 26PM 13 **Q. I'm going to put back up on the screen**
 04 37 30PM 14 **Exhibit No. 144.**
 04 37 34PM 15 **Does this show the tarp that you just**
 04 37 38PM 16 **described?**
 04 37 42PM 17 **A. There is people standing on the tarp**
 04 37 46PM 18 **here, and there is another place here where people**
 04 37 50PM 19 **lay down after.**
 04 37 54PM 20 **Q. Do you recall where you went?**
 04 37 58PM 21 **A. I went over here.**
 04 38 02PM 22 **Q. Who is it that hosed you down?**
 04 38 06PM 23 **A. At the end I don't know who hosed me**
 04 38 10PM 24 **down. Jennifer was manning the hose when I came**
 04 38 14PM 25 **out earlier. But I don't recall who was hosing me**
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04 37 55PM 1 **down after.**
 04 37 59PM 2 **Q. Will you describe generally the scene**
 04 38 03PM 3 **after Mr. Ray's ceremony came to an end what was**
 04 38 07PM 4 **the scene outside.**
 04 38 11PM 5 **A. It was very chaotic.**
 04 38 15PM 6 **Q. How so?**
 04 38 19PM 7 **A. People were throwing up. People were**
 04 38 23PM 8 **moaning. People were asking for help. People**
 04 38 27PM 9 **couldn't walk.**
 04 38 31PM 10 **Q. And how about you?**
 04 38 35PM 11 **A. I couldn't walk at first. And then after**
 04 38 39PM 12 **getting sprayed down and drinking, I was able to**
 04 38 43PM 13 **get up, but I was shaky.**
 04 38 47PM 14 **Q. Did anybody appear to be in charge of the**
 04 38 51PM 15 **scene outside that tent?**
 04 38 55PM 16 **A. No.**
 04 38 59PM 17 **Q. You said people were calling for help.**
 04 39 03PM 18 **Who responded?**
 04 39 07PM 19 **A. Other warriors and Dream Team members.**
 04 39 11PM 20 **Q. Once you were outside, did you see**
 04 39 15PM 21 **Mr. Ray?**
 04 39 19PM 22 **A. I did.**
 04 39 23PM 23 **Q. And where was he?**
 04 39 27PM 24 **A. He had sat down close to here.**
 04 39 31PM 25 **Q. In a chair?**
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04 39 07PM 1 **A. Yes.**
 04 39 11PM 2 **Q. What was he doing?**
 04 39 15PM 3 **A. Drinking electrolyte water.**
 04 39 19PM 4 **Q. Who was taking care of the people that**
 04 39 23PM 5 **were calling for help?**
 04 39 27PM 6 **A. The warriors and other spiritual**
 04 39 31PM 7 **warriors, the Dream Team members.**
 04 39 35PM 8 **Q. Did you hear Mr. Ray say anything about**
 04 39 39PM 9 **what to do about the scene?**
 04 39 43PM 10 **A. I do recall somebody asking for help and**
 04 39 47PM 11 **he saying, I'm not a nurse. Where is the nurse?**
 04 39 51PM 12 **And that is when I became aware that the nurse was**
 04 39 55PM 13 **around the back of the tent.**
 04 39 59PM 14 **THE COURT: Ms. Polk, we have to stop right**
 04 40 03PM 15 **now at 20 till.**
 04 40 07PM 16 **So we will take the evening recess at**
 04 40 11PM 17 **this time, ladies and gentlemen. I want to ask**
 04 40 15PM 18 **that -- the jury to return at 9:30.**
 04 40 19PM 19 **Again, trying to anticipate some legal**
 04 40 23PM 20 **matters and things to discuss. There will be some**
 04 40 27PM 21 **special instructions for some of you. Nothing to**
 04 40 31PM 22 **be concerned with in any way. But Ms. Rybar will**
 04 40 35PM 23 **inform you of that.**
 04 40 39PM 24 **Ms. Phillips, you will be excused. For**
 04 40 43PM 25 **the evening, that is. I want to remind you the**
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04 40 30PM 1 **rule of exclusion. And I will elaborate on that.**
 04 40 34PM 2 **I don't know who all your friends are, of**
 04 40 38PM 3 **course, or anything like that. But when I said not**
 04 40 42PM 4 **to communicate with any other witness about your**
 04 40 46PM 5 **testimony, you can't do that until the case is**
 04 40 50PM 6 **over.**
 04 40 54PM 7 **It's important that you don't communicate**
 04 40 58PM 8 **somehow so that that might get to another witness.**
 04 41 02PM 9 **Again, I don't know who your circle of friends**
 04 41 06PM 10 **might be or anything like that. I just want to**
 04 41 10PM 11 **caution you not to be talking about your testimony**
 04 41 14PM 12 **whatsoever, communicating over the internet about**
 04 41 18PM 13 **it or anything like that.**
 04 41 22PM 14 **Do you understand the rule?**
 04 41 26PM 15 **THE WITNESS: I do.**
 04 41 30PM 16 **THE COURT: Remember, you can talk to the**
 04 41 34PM 17 **attorneys, though, as long as another witness is**
 04 41 38PM 18 **not present. Okay?**
 04 41 42PM 19 **You may step down and --**
 04 41 46PM 20 **THE WITNESS: Thank you.**
 04 41 50PM 21 **THE COURT: -- whatever the attorneys do in**
 04 41 54PM 22 **terms of instructing you for tomorrow.**
 04 41 58PM 23 **We will take the recess.**
 04 42 02PM 24 **Ladies and gentlemen, remember the**
 04 42 06PM 25 **admonition. I've been over it many times, but it**
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04 41 28PM 1 bears repeating.
 04 41 28PM 2 Obviously, I have some general
 04 41 31PM 3 instructions I'll give you tomorrow just about a
 04 41 31PM 4 couple things I've observed. Again, nothing of any
 04 41 31PM 5 serious nature. But just some things I want to
 04 41 31PM 6 mention when we get started.
 04 41 40PM 7 I want to see Ms. Polk and Mr. Li about
 04 41 40PM 8 something not related to the case. I just ask that
 04 41 40PM 9 you come back to my office. And we are in recess.
 04 41 51PM 10 Thank you.

11 (The proceedings concluded.)
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246

1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3
 4 I, Mina G Hunt, do hereby certify that I
 5 am a Certified Reporter within the State of Arizona
 6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
 8 were taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action

16 In witness whereof, I have affixed my
 17 signature this 12th day of January, 2012

18
 19
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 22
 23
 24
 25

 MINA G HUNT, AZ CR No 50619
 CA CSR No 8335

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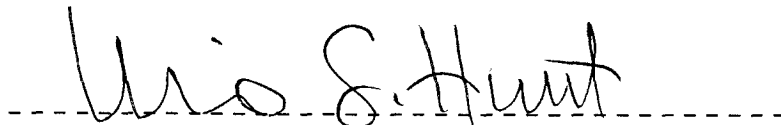
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 12th day of January, 2012.
18
19
20
21

22 
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335